# JOINT APPENDIX

## In the Supreme Court of the United States

OCTOBER TERM, 1980

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**No. 79-1890**

CECIL D. ANDRUS, ET AL.

*v.*

STATE OF ALASKA

---

**No. 79-1904**

KENAI PENINSULA BOROUGH

*v.*

STATE OF ALASKA

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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**PETITION FOR A WRIT OF CERTIORARI FILED IN CECIL D. ANDRUS, ET AL. v. STATE OF ALASKA, MAY 30, 1980 AND IN KENAI PENINSULA BOROUGH v. STATE OF ALASKA, JUNE 2, 1980**
**PETITIONS FOR A WRIT OF CERTIORARI GRANTED OCTOBER 6, 1980**

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

D.C. No. A 76-94 Civil and J 76-3 Civil (Consolidated)

KENAI PENINSULA BOROUGH, a Municipal Corporation,
PLAINTIFF-APPELLANT/APPELLEE

*vs.*

CECIL D. ANDRUS, DEFENDANT-APPELLANT/APPELLEE

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STATE OF ALASKA, PLAINTIFF-APPELLEE

*vs.*

THOMAS S. KLEPPE, DEFENDANTS-APPELLANTS

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I, JoANN MYRES, CLERK of the above mentioned court do hereby certify that I am transmitting copies of the foregoing listed papers to the Office of the Clerk of the United States Court of Appeals for the Ninth Circuit.

I also certify that the copies herewith transmitted are true and correct copies of originals filed in my office.

The papers herewith transmitted constitute the Record on Appeal pursuant to the Notice of Appeal and Designation of Record filed by Stipulation of Parties.

Dated this 22nd day of February, 1978.

JoANN MYRES, Clerk

By: /s/ Phyllis Choder
Deputy Clerk

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA, AT JUNEAU

J 76-3 CIV

[Filed Jul. 8, 1976]

STATE OF ALASKA, PLAINTIFF

*vs.*

THOMAS S. KLEPPE, Secretary of the Interior,
WILLIAM E. SIMON, Secretary of the Treasury and
ELMER B. STAATS, Comptroller General, DEFENDANTS

# COMPLAINT FOR DECLARATORY RELIEF AND ORDERS OF MANDAMUS

The State of Alaska, by and through its Attorney General, Avrum M. Gross, brings this action for declaratory relief and orders in the nature of mandamus against the above-named defendants.

## *First Claim for Relief*

1. Jurisdiction for this claim is based on 28 U.S.C. §§ 1331, 1361.

2. Plaintiff is a sovereign State of the United States of America.

3. Defendant Thomas S. Kleppe, is the Secretary of the United States Department of the Interior and is sued here in his official capacity. Defendant Thomas S. Kleppe

is responsible for administration of public lands and laws relating thereto, including the Mineral Leasing Act of 1920, 30 U.S.C. § 181 *et seq.*

4. Defendant William E. Simon is Secretary of the United States Department of the Treasury and is sued here in his official capacity. Defendant William E. Simon is responsible for the receipt into the treasury and payment out of the treasury of certain money derived from the sale or lease of public land. 30 U.S.C. § 191.

5. Defendant, Elmer B. Staats is Comptroller General of the United States and is sued here in his official capacity. Defendant Elmer B. Staats is responsible, with defendant William E. Simon, for payment out of the treasury of money pursuant to the Mineral Leasing Act of 1920. 30 U.S.C. § 191, 31 U.S.C. §§ 47, 74, 147.

6. Under the Mineral Leasing Act of 1920 all money received by the United States for sales, bonuses, royalties and rentals of public land is paid into the Treasury of the United States. The Secretary of the Treasury is then required to pay 37½% of the revenue so received to the State in which the public land is located. An additional 52½% of the revenue is to be paid into the Reclamation Fund created under the Reclamation Act of June 17, 1902, except that for revenue derived from public land located in Alaska this 52½% is to be paid to the State of Alaska rather than into the Reclamation Fund. 30 U.S.C. § 191, Alaska Statehood Act, § 28(b), 72 Stat. 339.

7. Prior to an amendment in 1964, the Act of June 15, 1935, provided that revenue from the sale or other disposition of "surplus wildlife, or timber, hay, grass, or other spontaneous products of the soil, shell, sand or gravel, or other privileges" from a wildlife refuge was to be paid into the United States Treasury and the distributed from the Treasury, 25% to the county (or counties) in which the refuge was located and 75% into a special Wildlife Fund. § 410, 49 Stat. 383.

8. Under the Act of June 15, 1935, those counties which contained Wildlife refuges from which large quan-

tities of the enumerated products were sold received large payments from the United States while those counties which contained wildlife refuges from which small amounts were sold received only small payments.

9. The Migratory Bird Conservation Act, 16 U.S.C. § 715 *et seq.* empowers the Secretary of the Interior to acquire wet lands and other habitat essential to the preservation of waterfowl. Under the Act, the Governor of the State in which land to be acquired is located must give his approval to the acquisition. 16 U.S.C. § 715f.

10. Since acquisition by the United States of waterfowl habitat land often meant withdrawal of the land from the local property tax base with little prospect that federal revenues equivalent to the lost revenues would be received, the Secretary of the Interior found it difficult to obtain the approval of Governors in effected States.

11. To solve this problem, Congress amended the Act of June 15, 1935 in 1964. Revenues derived from products produced on wildlife refuges created from *reserved* public land would continue to be distributed as they had been in the past; but revenue from wildlife refuges created from *acquired* land (which would be the case for waterfowl habitat areas acquired under the Migratory Bird Conservation Act) would be distributed according to a formula which allowed each county in which a wildlife refuge with acquired land was located to choose either 25% of the revenue received by the United States from that refuge or ¾ of 1% of the cost of the land adjusted to represent current value. 16 U.S.C. § 715s.

12. The 1964 amendment also added the term "minerals" to the list of enumerated products to which the Act of June 15, 1935 was applicable. 16 U.S.C. § 715s.

13. At some date, unknown to plaintiff, but assumed to be before July 1, 1975, the Director of the United States Fish and Wildlife Service sought an opinion from the Solicitor, U.S. Department of the Interior, concerning the 1964 amendment to the Act of June 15, 1935.

14. The memorandum of the Solicitor to the Director of the U.S. Fish and Wildlife Service began its analysis

of the relationship between the Act of June 15, 1935, the 1964 amendment thereto, and the Mineral Leasing Act of 1920 by first determining that the term "minerals" included oil and gas. The Solicitor then determined that the legal issue he must decide was "whether, insofar as federal receipts from the [wildlife] Refuge System are concerned, there is an 'irreconciliable conflict' between" the Mineral Leasing Act of 1920, 30 U.S.C. § 191 and the 1964 amendment, 16 U.S.C. § 715s. The Solicitor concluded an "irreconciliable conflict" did exist and further determined that the 1964 amendment, being later in time, was to govern the distribution of receipts from all wildlife refuges.

15. The Solicitor, evidently uncertain about his conclusion, asked the Comptroller General of the United States if he concurred with the opinion.

16. In a decision, issued July 29, 1975, the Comptroller General, acting through his deputy, stated his concurrence. The Comptroller General's decision adopted the same reasoning as the memorandum of the Solicitor.

17. Upon learning of the Comptroller General's decision, the State of Alaska, acting through its Attorney General, requested the Comptroller General to reconsider his decision. Alaska presented to the Comptroller General evidence from the legislative history of the 1964 amendment which demonstrated that the Mineral Leasing Act of 1920 and the 1964 amendment to the Act of June 15, 1935 were not irreconcilably in conflict.

18. Alaska's evidence revealed that Congress only intended to ratify the system of receipt and distribution which existed prior to 1964 insofar as oil and gas revenue was concerned. For wildlife refuges created from *reserved* public land, the land was to be leased according to the Mineral Leasing Act of 1920 and revenues distributed according to the terms of that Act.

19. Revenue from oil and gas produced from wildlife refuges created from *acquired* land was to be distributed according to the terms of 16 U.S.C. § 715s not because

that provision of law commanded it, but because the Mineral Leasing Act for Acquired Lands 30 U.S.C. § 351 *et seq.* required such distribution. That Act provides as follows:

> All receipts derived from leases issued under the authority of this chapter shall be paid into the same funds or accounts in the Treasury and shall be distributed in the same manner as prescribed for other receipts from the lands affected by the lease, the intention of this provision being that this chapter shall not affect the distribution of receipts pursuant to legislation applicable to such lands: *Provided, however*, That receipts from leases or permits for minerals in lands set apart for Indian use, including lands the jurisdiction of which has been transferred to the Department of the Interior by the Executive order for Indian use, shall be deposited in a special fund in the Treasury until final disposition thereof by the Congress. 30 U.S.C. § 355

20. Because the Solicitor and the Comptroller General did not identify in their memorandum and decision, respectively, the different treatment accorded oil and gas revenues from wildlife refuges created from reserved public land and those created from acquired land, they erroneously concluded that the 1964 amendment to the Act of June 15, 1935 impliedly repealed the Mineral Leasing Act of 1920, when in fact the amendment was intended only to confirm the existing distinction between reserved and acquired wildlife refuges.

21. On February 13, 1976, while the Comptroller General still had Alaska's request for reconsideration under advisement, the Secretary of the Interior, acting through his agent, A. J. Ondrof, Acting Assistant Director for Administration, withheld payment to Alaska of $2,945,212.12, the sum attributable to production of mineral resources from wildlife refuges and payable to Alaska under the Mineral Leasing Act of 1920, if that

Act is applicable to mineral production on wildlife refuges created from reserved public land. The Secretary's action in withholding payment was taken despite the fact that between 1964 when the amendment was first enacted and February 13, 1976 biannual payments of several million dollars have been made to Alaska pursuant to the Mineral Leasing Act.

22. On June 11, 1976 the Comptroller General issued a decision responsive to Alaska's request for reconsideration. That decision reaffirmed the Comptroller General's earlier decision and the memorandum of the Solicitor, U.S. Department of the Interior.

23. Since the Comptroller General's decision of June 11, 1976 neither the Secretary of the Interior nor the Secretary of the Treasury has paid to Alaska the $2,945,212.12 which is Alaska's 90% share of the revenue received from mineral production on wildlife refuges created from reserved public land located in Alaska. Alaska believe no such payments will be made in the future.

24. The action of the Secretary of the Interior, is injurious to the State of Alaska in that it deprives Alaska of almost 3 million dollars which should have been paid to Alaska in February, 1976 and further that Alaska expects it will be deprived of an approximately similar payment which will be due in August, 1976, and all payments due thereafter.

25. The actions of the Secretary of the Interior and the Secretary of the Treasury in refusing to make payment to Alaska are unlawful because the Mineral Leasing Act of 1920 imposes upon these officials a mandatory duty to make payment to Alaska of 90% of the revenue received from mineral development on wildlife refuges created from reserved public land.

26. In refusing to make payment to Alaska, the Secretary of the Interior and the Secretary of the Treasury have exceeded their statutory authority.

*Second Claim for Relief*

27. Jurisdiction for this claim is based on 28 U.S.C. § 1331, 1361 and 5 U.S.C. § 701 *et seq.*

28. Paragraphs 1 to 26 are realleged and incorporated as if fully stated herein.

29. The Comptroller General has acted without legal authority by issuing a legal opinion of concurrence with a memorandum of the Solicitor of the U.S. Department of the Interior.

30. Even if the Comptroller General possesses legal authority to issue the opinion, he has acted unlawfully and beyond the scope of his authority because he has incorrectly concluded that the 1964 amendment to the Act of June 15, 1935 supersedes the Mineral Leasing Act of 1920.

WHEREFORE, plaintiff prays judgment as follows:

31. That this court issue an order declaring that the 1964 amendment to the Act of June 15, 1935 did not repeal or otherwise supersede the Mineral Leasing Act of 1920 insofar as distribution of federal receipts from mineral production on wildlife refuges reserved from public domain is concerned.

32. That this court issue an order commanding the Secretaries of the Interior and Treasury to perform their mandatory duty to pay to the State of Alaska, 90% of the revenue received by the United States from mineral production on wildlife refuges located in Alaska.

33. That this court issue an order declaring the July 29, 1975 and June 11, 1976 decisions of the Comptroller General invalid and of no legal effect.

34. For such other relief as may appear reasonable and proper.

Dated this 8 day of July, 1976.

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UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
AT ANCHORAGE

Case No. A76-94 CIV

[Filed May 14, 1976]

KENAI PENINSULA BOROUGH,
a municipal corporation, PLAINTIFF

*vs.*

THOMAS S. KLEPPE, Secretary of the Interior, DEFENDANT

## COMPLAINT FOR DECLARATORY JUDGMENT, WRIT OF MANDATE AND INJUNCTION

Plaintiff alleges:

1. The United States District Court for the District of Alaska has jurisdiction of this action under:

a. 28 U.S.C. § 1331(a) in that the matter in controversy exceeds the value of $10,000.00 and arises under the Constitution or laws of the United States, more specifically under 16 U.S.C. § 715s(c), as more fully hereinafter appears;

b. 28 U.S.C. § 1361 in that this is an action in mandamus to compel the Secretary of the Interior to perform his duties under 16 U.S.C. § 715s(c), as more fully hereinafter appears.

2. Plaintiff, Kenai Peninsula Borough, is a county-type municipality of the State of Alaska, organized pursuant to Chapter 52, SLA 1963 which assumed the functions of such municipality on January 1, 1964.

3. Defendant, Thomas S. Kleppe, is the Secretary of the Interior and as such is charged with the administration of 16 U.S.C. § 715s(c).

## FIRST CLAIM FOR RELIEF

4. On December 16, 1941, Executive Order 8979 withdrew and reserved for use as a refuge and breeding ground for moose certain land on the Kenai Peninsula, Alaska. The area withdrawn is all contained within the National Wildlife Refuge System and is known as the Kenai National Moose Range.

5. The Kenai National Moose Range in its entirety is situate within the Kenai Peninsula Borough, a county-type municipal government and a political subdivision of the State of Alaska.

6. Plaintiff is informed and believes and upon such information and belief alleges that since July 1, 1975, defendant Secretary of the Interior has received revenue from the sale or other disposition of minerals from the Kenai National Moose Range, Alaska. More specifically, plaintiff is informed and believes and upon such information and belief, alleges such revenue consists of the proceeds of rentals, royalties and bonuses from certain Federal oil and gas leases on lands situate within the Kenai National Moose Range.

7. Pursuant to 16 U.S.C. § 715s(c)(1), defendant, Secretary of the Interior, at the end of the current fiscal year, shall pay from the said receipts described in Paragraph 6 (after payment of necessary expenses), including all receipts hereinafter received for the current fiscal year an amount equal to 25% of such net receipts to plaintiff, Kenai Peninsula Borough; said monies to be expended solely for the benefit of public schools and roads.

8. Plaintiff is informed and believes and upon such information and belief alleges that defendant will not pay the 25% share of said net receipts to plaintiff. The reasons upon which this allegation is made include but are not limited to the following:

a. Plaintiff is informed and believes and upon such information and belief alleges that since July 1, 1965, and possibly earlier, defendant, Secretary of the Interior, has received revenue originating as described in Paragraph 6, and that no payment of any portion thereof has been made to plaintiff.

b. On March 31, 1976, demand was made upon the General Accounting Office of the United States with a copy of such demand to the Solicitor of the Department of the Interior, that all proceeds from Federal oil and gas leases on the Kenai National Moose Range be distributed according to the provisions of 16 U.S.C. § 715s (c). A copy of said letter is attached as Exhibit "A" to this Complaint. Plaintiff has received no indication that its request will be complied with.

c. Plaintiff is informed and believes and upon such information and belief alleges that in years prior to the fiscal year ending June 30, 1976, the proceeds from Federal oil and gas leases situate within the Kenai National Moose Range, Alaska, have been erroneously distributed under color of 30 U.S.C. § 191; more specifically 37½% thereof to the State of Alaska for the construction and maintenance of public roads or the support of public schools and 52½% thereof to the State of Alaska to be expended as the legislature directs. Plaintiff has received no indication that the proceeds from such oil and gas leases for the fiscal year ending June 30, 1976, will not be distributed in any manner other than as in prior fiscal years.

9. Plaintiff, Kenai Peninsula Borough, is entitled to orders of this Court as follows:

a. Under 28 U.S.C. § 2201, a judgment declaring that plaintiff, Kenai Peninsula Borough, is entitled to twenty-five percent (25%) of the net receipts (after payment of necessary expenses) derived from Federal oil and gas leases situate within the Kenai National Moose Range, Alaska, for the fiscal year ending June 30, 1976, all in accordance with 16 U.S.C. § 715s(c).

b. Under 28 U.S.C. § 1361, a judgment in the nature of mandamus compelling defendant, the Secretary of the Interior, to pay to plaintiff an amount equal to twenty-five percent (25%) of the net receipts (after payment of necessary expenses) derived from Federal oil and gas leases situate within the Kenai National Moose Range, Alaska, all in accordance with 16 U.S.C. § 715s(c).

## SECOND CLAIM FOR RELIEF

10. Incorporated herein by reference are Paragraphs 1 through 4, inclusive, of this Complaint.

11. Plaintiff is informed and believes, and upon such information and belief, alleges that since July 1, 1965, and possibly earlier, defendant, Secretary of the Interior, has received revenue from the sale or other disposition of minerals from the Kenai National Moose Range, Alaska. More specifically, plaintiff is informed and believes, and upon such information and belief, alleges such revenue consists of the proceeds of rentals, royalties and bonuses from certain Federal oil and gas leases on lands situate within the Kenai National Moose Range.

12. Plaintiff is informed and believes and upon such information and belief alleges that said revenue has been erroneously distributed by defendant in that:

a. Under color of 30 U.S.C. § 191, 37½% thereof was paid to the State of Alaska for the construction and maintenance of public roads or the support of public schools, and 52½% thereof to the State of Alaska to be expended as the legislature directs;

b. Twenty-five percent (25%) of the net receipts from Federal oil and gas leases situate in the Kenai National Moose Range, Alaska (less necessary expenses) for all fiscal years since July 1, 1965, and possibly earlier, should have been paid to plaintiff by defendant in accordance with 16 U.S.C. § 715s(c)(1). Plaintiff has received no revenue pursuant to said section.

13. Defendant has a duty to recover for plaintiff that portion of twenty-five percent of the net receipts from Federal oil and gas leases situate within the Kenai National Moose Range, Alaska (less necessary expenses) heretofore erroneously distributed since July 1, 1965, or before.

14. Plaintiff is informed and believes, and based upon such information and belief, alleges that defendant will not perform his duty as set forth in Paragraph 13. The reasons upon which this allegation is made include but are not limited to the following:

a. Plaintiff is informed and believes and upon such information and belief alleges that since March 16, 1976, or earlier, defendant has been aware of the erroneous payments described in Paragraph 12. Nevertheless, defendant has taken no action, known to plaintiff, to rectify such error.

15. Plaintiff, Kenai Peninsula Borough, is entitled to orders of this Court as follows:

a. Under 28 U.S.C. § 2201, a judgment declaring that plaintiff Kenai Peninsula Borough is entitled to twenty-five percent (25%) of the net receipts (after payment of necessary expenses) derived from Federal oil and gas leases situate within the Kenai National Moose Range, Alaska, for all fiscal years during the period July 1, 1965, through June 30, 1975, all in accordance with 16 U.S.C. § 715s(c).

b. Under 28 U.S.C. § 2201, a judgment declaring that defendant has a duty to recover for plaintiff that portion of twenty-five percent (25%) of the net receipts from

Federal oil and gas leases situate within the Kenai National Moose Range, Alaska (less necessary expenses) heretofore erroneously distributed, and thereafter to pay said receipts to plaintiff all in accordance with 16 U.S.C. § 715s(c).

c. Under 28 U.S.C. § 1361, a judgment in the nature of mandamus compelling defendant: (1) to recover for plaintiff that portion of 25% of the net receipts from Federal oil and gas leases situate within the Kenai National Moose Range, Alaska (less necessary expenses), heretofore erroneously distributed; (2) after such recovery to pay the amount thereof due to plaintiff in accordance with 16 U.S.C. § 715s(c).

THIRD CLAIM FOR RELIEF

16. Incorporated herein by reference are Paragraphs 1 through 7, inclusive, 11, 12 and 13 of the complaint.

17. The amount of the net receipts from Federal oil and gas leases situate within the Kenai National Moose Range, Alaska, from July 1, 1965 and possibly earlier, is unknown to plaintiff.

18. The manner in which the net receipts from Federal oil and gas leases situate within the Kenai National Moose Range, Alaska, has been distributed and is unknown to plaintiff.

19. Plaintiff is entitled to an order of this Court that defendant render an accounting as follows:

a. An itemization of the amount of net revenue, by fiscal year, derived from Federal oil and gas leases situate within the Kenai National Moose Range, Alaska, commencing July 1, 1965 through the present fiscal year.

b. An itemization of the manner in which said net revenue has been expended by fiscal year, including:

(1) The amounts paid by defendant.

(2) The entity receiving said payments from defendant.

(3) The date said payments were made by defendant.

FOURTH CLAIM FOR RELIEF

20. Incorporated herein by reference are Paragraphs 1 through 15, inclusive, of the Complaint.

21. Unless defendant is enjoined and restrained during the pendency of this action from distributing the net revenue from Federal oil and gas leases within the Kenai National Moose Range, in any manner, or in the alternative, only in accordance with 16 U.S.C. § 712s(c)(1), plaintiff will suffer great and irreparable damage.

2. Plaintiff has no adequate remedy at law.

WHEREFORE, PLAINTIFF PRAYS that this Court enter judgment granting relief as follows:

A. *AS TO THE FIRST CLAIM FOR RELIEF*

1. A judgment declaring that plaintiff is entitled to twenty-five percent (25%) of the net receipts (after payment of necessary expenses) derived from Federal oil and gas leases situate within the Kenai National Moose Range for the fiscal year ending June 30, 1976, all in accordance with 16 U.S.C. § 715s(c).

2. A judgment in the nature of mandamus compelling defendant to pay to plaintiff an amount equal to twenty-five percent (25%) of the net receipts (after payment of necessary expenses) derived from Federal oil and gas leases situate within the Kenai National Moose Range, Alaska, all in accordance with 16 U.S.C. § 715s(c).

3. For costs of suit for such further relief as the court may deem proper, including a reasonable attorney's fees.

B. *AS TO THE SECOND CLAIM FOR RELIEF*

1. A judgment declaring that plaintiff is entitled to twenty-five percent (25%) of the net receipts (after payment of necessary expenses) derived from Federal oil and gas leases situate within the Kenai National Moose Range, Alaska, for all fiscal years during the period

July 1, 1965 through June 30, 1975, all in accordance with 16 U.S.C. § 715s(c).

2. A judgment declaring that defendant has a duty to recover for plaintiff that portion of twenty-five percent (25%) of the net receipts from Federal oil and gas leases situate within the Kenai National Moose Range, Alaska (less necessary expenses), heretofore erroneously distributed.

3. A judgment in the nature of mandamus compelling defendant:

(a) To recover for plaintiff that portion of twenty-five percent (25%) of the net receipts from Federal oil and gas leases situated within the Kenai National Moose Range, Alaska (less necessary expenses), heretofore erroneously distributed;

(b) After such recovery of the amount of receipts erroneously distributed, or any part thereof, to pay the amount thereof due plaintiff in accordance with 16 U.S.C. § 715s(c).

4. For such further relief as the Court may deem proper, including a reasonable attorney's fee.

C. *AS TO THE THIRD CLAIM FOR RELIEF*

1. A judgment that defendant render to plaintiff an accounting:

a. Itemizing the amount of net revenue by fiscal year, derived from Federal oil and gas leases situate within the Kenai National Moose Range, Alaska;

b. Itemizing the manner in which said net revenue has been expended by fiscal year, including:

(1) The amounts paid by defendant;

(2) The entity receiving said payments from defendant;

(3) The date said payments were made by defendant.

2. For such further relief as the Court may deem proper, including a reasonable attorney's fee.

D. *AS TO THE FOURTH CLAIM FOR RELIEF*

1. An order enjoining defendant during the pendency of this action from distributing the net revenue from Federal oil and gas leases situate within the Kenai National Moose Range, in any manner, or in the alternative only in accordance with 16 U.S.C. § 712s (c) (1).

2. For costs of suit.

3. For such further relief as the Court may deem proper including a reasonable attorney fee.

DATED at Anchorage, Alaska, this 3 day of May, 1976.

GALLAGHER, CRANSTON & SNOW

By /s/ Charles K. Cranston
Charles K. Cranston
Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

[Filed Aug. 12, 1976]

No. A-76-94 Civil

KENAI PENINSULA BOROUGH, PLAINTIFF

*v.*

THOMAS S. KLEPPE, DEFENDANT

---

No. J76-3 Civil

STATE OF ALASKA, PLAINTIFF

*v.*

THOMAS S. KLEPPE, Secretary of the Interior, WILLIAM E. SIMON, Secretary of the Treasury and ELMER B. STAATS, Comptroller General, DEFENDANTS

## MEMORANDUM AND ORDER

THIS CAUSE comes before the court on plaintiff's motion to consolidate and defendant's motion to dismiss.

Plaintiff seeks to consolidate this case with another presently pending before this court, *State of Alaska* v. *Kleppe, et al*, J-76-3. The motion is unopposed (*See* Local Rule 5(B)(4).

Defendant's motion to dismiss is based on the theory that the State of Alaska is an indispensable party to this action. Because of the court's ruling on the motion for consolidation that ground no longer has merit.

IT IS ORDERED:

1. THAT this action be consolidated with J76-3, presently pending before this court.

2. THAT future papers, motions, and filings in this case be numbered A76-94.

THAT defendant's motion to dismiss is denied.

4. THAT the deputy Clerk of Court at Juneau forthwith transfer the file in cause J76-3 to the Clerk at Anchorage.

DATED at Anchorage, Alaska this 12th day of August 1976.

/s/ Illegible
United States District Judge

cc: Charles K. Cranston
G. Kent Edwards, U.S. Attorney
Avrum Gross, Attorney General for the State of Alaska

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

[Filed Jun. 17, 1976]

No. A76-94 Civil

KENAI PENINSULA BOROUGH,
a municipal corporation, PLAINTIFF

*v.*

THOMAS S. KLEPPE, Secretary of the Interior, DEFENDANT

ORDER

THIS CAUSE comes before the court upon plaintiff's motion for a preliminary injunction. In view of the affidavit of Tim Tafoya and without intimating any views whatsoever on the merits of this controversy,

IT IS ORDERED:

THAT the net revenue from the Federal oil and gas leases located within the Kenai National Moose Range be held in the suspense account numbered 14 x 685 pending a final determination of this action;

THAT in view of the above, the motion for preliminary injunction is denied without prejudice.

DATED at Anchorage, Alaska, this 17th day of June, 1976.

/s/ [Illegible]
United States District Judge

cc: U.S. Attorney
Charles K. Cranston

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. A76-94 CIV.

[Filed Sep. 1, 1976]

KENAI PENINSULA BOROUGH, PLAINTIFF

*v.*

THOMAS S. KLEPPE, DEFENDANT

---

No. J76-3 CIV.

STATE OF ALASKA, PLAINTIFF

*v.*

THOMAS S. KLEPPE, Secretary of the Interior, WILLIAM E. SIMON, Secretary of the Treasury and ELMER B. STAATS, Comptroller General, DEFENDANTS

## ANSWER TO STATE OF ALASKA'S COMPLAINT FOR DECLARATORY RELIEF

Defendants THOMAS S. KLEPPE, Secretary of the Interior, WILLIAM E. SIMON, Secretary of the Treasury, and ELMER B. STAATS, Comptroller General, by and through their undersigned attorneys, in response to the STATE OF ALASKA's Complaint for Declaratory Relief and Order of Mandamus, hereby allege, admit and deny as follows:

### FIRST CLAIM OF RELIEF

1. Defendants admit the allegations of paragraphs 1, 2, 3 and 4.

2. With respect to paragraph 5, defendants admit that ELMER B. STAATS is Comptroller General of the

United States and is being sued in his official capacity, but deny that he is responsible with defendant WILLIAM E. SIMON for payment out of the Treasury of money pursuant to the Mineral Leasing Act of 1920.

3. Defendants admit the first two sentences of paragraph 6 and deny the third sentence of said paragraph.

Defendants aver that the Federal Coal Leasing Amendments Act of 1975 provides that instead of an additional 52½ percent of the revenue to be paid into the Reclamation Fund, 40 percent is to be paid into that fund, with the remaining 12½ percent to be paid to the state for use in impacted areas; that Alaska, however, would still receive the total 52½ percent since that provision of the Mineral Leasing Act was not affected by the recent amendments.

4. With respect to paragraph 7, defendants deny that the Act of June 15, 1935 is accurately quoted and deny that said Act made provision for payment of the remaining 75 percent into a "special Wildlife Fund" as alleged by plaintiff.

5. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 and therefore deny same.

6. The allegations of paragraphs 9 and 10 contain characterizations of Acts and of the intent of Congress. These conclusions are not susceptible to responses as answers to the Complaint. The language of the cited Acts speaks for itself.

7. The allegations of paragraph 11 are denied with the exception of the first sentence. Defendants admit that Congress amended the Act of June 15, 1935 in 1964 as alleged in the first sentence of paragraph 11.

8. Defendants admit the allegations of paragraphs 12 and 13.

9. Defendants admit the allegations of paragraph 14 except to allege that the Solicitor's opinion was a draft and was never sent to the Director.

10. Defendants deny the allegations of paragraph 15 and allege that the Comptroller General's opinion was

requested pursuant to 31 U.S.C. § 74, since this was a question involving a payment to be made by the head of an executive agency.

11. With respect to paragraph 16, defendants admit that a decision was issued July 29, 1975 by the Comptroller General acting through the Deputy Comptroller General and that on specified points, the Comptroller General's reasoning and the Solicitor's reasoning were the same. The remaining allegations of paragraph 16 are denied and defendants specifically deny that the Comptroller General "adopted" the reasoning of the Solicitor, since each conclusion of the Comptroller General was based on the result of his independent research and judgment.

12. With respect to the allegations of paragraph 17, defendants admit that State of Alaska, acting through its Attorney General, requested that the Comptroller General reconsider his decision, and that Alaska presented evidence from the legislative history of the 1964 amendment. The remainder of the averment of paragraph 17 states a conclusion of law which goes to the merits of this matter and is not susceptible to response as an answer to the Complaint.

13. The allegations of paragraphs 18 and 19 state conclusions of law not susceptible to response as answers to the Complaint.

14. With respect to the allegations of paragraph 20, defendants deny that the Solicitor and the Comptroller General did not identify the different statutory treatment accorded revenues derived from reserved public lands and those derived from acquired land. The remainder of the averment states a conclusion of law, not susceptible to response as an answer to the complaint.

15. Defendants admit the allegations of paragraphs 21 and 22.

16. With respect to the allegations of paragraph 23, defendants admit that no money has been paid or is intended to be paid to the State of Alaska since the Comp-

troller General's decision of June 11, 1976, but deny that the sum quoted is Alaska's share of the revenue received.

17. Defendants deny the allegations of paragraph 24 and affirmatively allege that Alaska is not lawfully entitled to the sums alleged.

18. Defendants deny the allegations of paragraphs 25 and 26.

## SECOND CLAIM FOR RELIEF

19. Defendants admit the allegations of paragraph 27.

20. In response to paragraph 28, the defendants incorporate their answers to paragraphs 1 through 26 as though fully set forth herein.

21. Defendants deny the allegations of paragraphs 29 and 30.

22. All averments not specifically admitted are denied.

## FIRST AFFIRMATIVE DEFENSE

23. The court is without jurisdiction to grant the relief requested in paragraphs 31 and 32 of the Complaint.

## CONCLUSION

WHEREFORE, defendants request that plaintiff takes nothing by their Complaint, that the Complaint be dismissed with costs and attorney fees taxed to plaintiff, and for such further relief as may be appropriate.

DATED this 1st day of September, 1976, at Anchorage, Alaska.

G. KENT EDWARDS
United States Attorney

By: /s/ John D. Roberts
JOHN D. ROBERTS
Assistant U.S. Attorney

CHARLES K. CRANSTON, Esq.
Gallagher, Cranston & Snow
310 "K" Street, Suite 500
Anchorage, Alaska 99501

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

Consolidated Actions J-76-3 and A-76-94

[Filed Sep. 1, 1976]

KENAI PENINSULA BOROUGH,
a municipal corporation, PLAINTIFF

*vs.*

THOMAS S. KLEPPE, Secretary of the Interior, DEFENDANT

# ANSWER OF KENAI PENINSULA BOROUGH TO COMPLAINT OF STATE OF ALASKA FOR DECLARATORY RELIEF AND ORDERS OF MANDAMUS

COMES NOW the plaintiff, Kenai Peninsula Borough, and in answer to the Complaint of the State of Alaska for Declaratory Relief and Orders of Mandamus in this consolidated action, hereby alleges, admits and denies as follows:

1. Plaintiff admits the allegations of paragraphs 1, 2, 3, 4, 5, 6, and 22 of the Complaint.

2. Plaintiff states that in answer to the allegations contained in paragraph 7, the text of 16 U.S.C. § 715s speaks for itself prior to its amendment in 1964.

3. Plaintiff states that in answer to the allegations contained in paragraphs 8, 10, 13, 14, 15, 21, and 23, it is withoug sufficient information or belief to enable it

to answer same, and on that basis denies each and every allegation contained therein.

4, Plaintiff states that in answer to the allegation contained in paragrph 9 and 11, the provisions of 16 U.S.C. § 715 *et seq.* speak for themselves and need no further elaboration and except as herein stated, deny each and every allegation contained in paragraph 11.

5. Plaintiff states that in answer to the allegations contained in paragraph 12, and text of 16 U.S.C. § 715s as amended in 1964, speaks for itself and needs no further elaboration.

6. Plaintiff states that in answer to the allegations contained in paragraph 16, the Comptroller General issued an opinion, dated July 29, 1975, relative to the subject matter of this litigation, and except as herein stated is without sufficient information or belief to enable it to answer the remaining allegations of said paragraph, and on that basis denies each and every such allegations.

7. Plaintiff admits that allegations contained in paragraph 17 in that the State of Alaska, acting through its Attorney General, requested the Comptroller General to reconsider his decision and presented its argument in support of its position. Plaintiff, Kenai Peninsula Borough, denies the validity of the arguments advanced by the Attorney General.

8. Plaintiff denies the allegations contained in paragraphs 18, 19, 20, 24, 25, 26, 29, and 30.

9. Plaintiff admits the allegations contained in paragraph 27.

10. Plaintiff, in answer to the allegations contained in paragraph 28, incorporates its answer to the allegations contained in paragraphs 1 through 26, inclusive, of the

WHEREFORE, plaintiff, Kenai Peninsula Borough, prays for judgment as follows:

1. That the Complaint herein be dismissed;

2. That the relief prayed for by the Kenai Peninsula Borough in its Complaint against Thomas S. Kleppe be granted; and

3. For such other or further relief as the court may deem proper.

DATED at Anchorage, Alaska, this 31 day of August, 1976.

GALLAGHER, CRANSTON & SNOW
Attorneys for Plaintiff

By /s/ Charles K. Cranston
CHARLES K. CRANSTON

Copy Received this 31 day of August, 1976.

/s/ [Illegible]
U.S. Attorney General

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. J76-3 & A76-94 Consolidated

[Filed Dec. 10, 1976]

KENAI PENINSULA BOROUGH,
a municipal corporation, PLAINTIFF

*v.*

THOMAS S. KLEPPE, Secretary of the Interior, DEFENDANT

ORDER

THIS CAUSE comes before the court on Kenai Peninsula Borough's motion to intervene as a defendant and for an order permitting filing of an answer, counterclaim and crossclaim in J76-3. This motion was unopposed and is therefore well taken. Local Rule 5(b) (4).

Accordingly IT IS ORDERED:

1. THAT the motion to intervene as a defendant is granted.
2. THAT the answer, counterclaim and crossclaim of the intervening party is deemed filed as of this date.
3. THAT the other parties will appropriately respond within 20 days of this order.

DATED at Anchorage, Alaska, this 10th day of December, 1976.

/s/ [Illegible]
United States District Judge

cc: Charles K. Cranston
U.S. Attorney

CHARLES K. CRANSTON, Esq.
Gallagher, Cranston & Snow
310 "K" Street, Suite 500
Anchorage, Alaska 99501

Attorneys for Plaintiff and
Intervening Defendant

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

Consolidated Actions J-76-3 and A-76-94

[Filed Dec. 10, 1976]

KENAI PENINSULA BOROUGH, PLAINTIFF,

*vs.*

THOMAS S. KLEPPE, DEFENDANT.

STATE OF ALASKA, PLAINTIFF

*vs.*

THOMAS S. KLEPPE, Secretary of the Interior, WILLIAM E. SIMON, Secretary of the Treasury and ELMER B. STAATS, Comptroller General, DEFENDANTS

and

KENAI PENINSULA BOROUGH, INTERVENING DEFENDANT

# ANSWER OF KENAI PENINSULA BOROUGH TO COMPLAINT OF STATE OF ALASKA FOR DECLARATORY RELIEF AND ORDERS OF MANDAMUS, COUNTERCLAIM AND CROSS-CLAIM

## ANSWER

Kenai Peninsula Borough, intervenor, in answer to the Complaint of the State of Alaska for Declaratory Relief and Orders of Mandamus in this consolidated action, hereby alleges, admits and denies as follows:

1. Admits the allegations of paragraphs 1, 2, 3, 4, 5, 6 and 22 of the complaint.

2. States that in answer to the allegations contained in paragraph 7, the text of 16 U.S.C. § 715s speaks for itself prior to its amendment in 1964.

3. States that in answer to the allegations contained in paragraphs 8, 10, 13, 14, 15, 21 and 23, it is without sufficient information or belief to enable it to answer same, and on that basis denies each and every allegation contained therein; except that to the extent any documents or opinions are mentioned in said paragraphs, said documents or opinions speak for themselves.

4. States that in answer to the allegations contained in paragraphs 9 and 11, the provisions of 16 U.S.C. § 715 *et seq.*, speak for themselves and need no further elaboration, and except as herein stated, deny each and every allegation contained in paragraph 11.

5. States that in answer to the allegations contained in paragraph 12, and text of 16 U.S.C. §715s as amended in 1964, speaks for itself and needs no further elaboration.

6. States that in answer to the allegations contained in paragraph 16, the Comptroller General issued an opinion, dated July 29, 1975, relative to the subject matter of this litigation, and except as herein stated is without sufficient information or belief to enable it to answer the remaining allegations of said paragraph, and on that basis denies each and every such allegation; except that the Comptroller General's opinion speaks for itself.

7. Admits the allegations contained in paragraph 17 in that the State of Alaska, acting through its Attorney

General, requested the Comptroller General to reconsider his decision and presented its argument in support of its position. The Kenai Peninsula Borough denies the validity of the arguments advanced by the Attorney General.

8. Denies the allegations contained in paragraphs 18, 19, 20, 24, 25, 26, 29 and 30; except that the statutes referred to therein speak for themselves.

9. Admits the allegations contained in paragraph 27.

10. In answer to the allegations contained in paragraph 28, incorporates its answer to the allegations contained in paragraphs 1 through 26, inclusive, of the First Claim for Relief.

## COUNTERCLAIM AGAINST STATE OF ALASKA

The Kenai Peninsula Borough, hereinafter called intervenor, for a counterclaim against the State of Alaska alleges:

### FIRST CLAIM FOR RELIEF

1. The United States District Court for the District of Alaska has jurisdiction of this action under:

a. 28 U.S.C. § 1331(a) in that the matter in controversy exceeds the value of $10,000.00 and arises under the Constitution or laws of the United States, more specifically under 16 U.S.C. § 715s(c), as more fully hereinafter appears;

b. This court may adjudicate the matters raised in this counterclaim by assuming pendent jurisdiction, *Hurn* v. *Oursler*, 289 U.S. 238 (1933).

2. Counterclaimant and intervenor, Kenai Peninsula Borough, is a county-type municipality of the State of Alaska, organized pursuant to Chapter 52, SLA 1963, and assumed the functions of such municipality on January 1, 1964.

3. On December 16, 1941, Executive Order 8979 withdrew and reserved for use as a refuge and breeding ground for moose certain land on the Kenai Peninsula,

Alaska. The area withdrawn is all contained within the National Wildlife Refuge System and is known as the Kenai National Moose Range.

4. The Kenai National Moose Range in its entirety is situate within the Kenai Peninsula Borough, a county-type municipal government and political subdivision of the State of Alaska.

5. Intervenor is informed and believes, and upon such information and belief alleges that since July 1, 1965, and possibly earlier, defendant, Secretary of the Interior, has received revenue from the sale or other disposition of minerals from the Kenai National Moose Range, Alaska. More specifically, intervenor is informed and believes, and upon such information and belief alleges such revenue consists of the proceeds of rentals, royalties and bonuses from certain federal oil and gas leases situate within the Kenai National Moose Range.

6. Intervenor is informed and believes, and upon such information and belief alleges that during all fiscal years since July 1, 1965, and possibly earlier, the State of Alaska has erroneously received the share of the Kenai Peninsula Borough to the net receipts from federal oil and gas leases situate in the Kenai National Moose Range, Alaska, (after payment of necessary expenses). Said 25% share of such receipts should have been paid to the Kenai Peninsula Borough in accordance with 16 U.S.C. § 715s(c)(1), but has not.

7. The Kenai Peninsula Borough has been paid none of such money erroneously received by the State of Alaska, and the State of Alaska continues to withhold said money from the Kenai Peninsula Borough.

8. Intervenor is entitled to judgment ordering the State of Alaska to pay to the Kenai Peninsula Borough an amount equal to 25% of the net receipts from federal oil and gas leases situate in the Kenai National Moose Range, Alaska, (after payment of necessary expenses), to the extent such amounts have been erroneously paid to the State of Alaska.

## SECOND CLAIM FOR RELIEF

9. Incorporated herein by reference are paragraphs 1 through 8 of the First Claim for Relief.

10. The amount of net receipts from federal oil and gas leases situate within the Kenai National Moose Range, Alaska, from July 1, 1965, and possibly earlier, is unknown to Kenai Peninsula Borough.

11. The exact amount of money received by the State of Alaska is unknown to Kenai Peninsula Borough.

12. Kenai Peninsula Borough is entitled to an order of this court that the State of Alaska render an accounting as follows:

a. An itemization of the amount of net revenue, by fiscal year, derived from federal oil and gas leases situate within the Kenai National Moose Range, Alaska, by the State of Alaska;

b. The date of such payments and the years to which such payments were attributable.

## CROSS-CLAIM

Intervenor alleges:

## FIRST CLAIM FOR RELIEF

1. The United States District Court for the District of Alaska has jurisdiction of this action under:

a. 28 U.S.C. § 1331(a) in that the matter in controversy exceeds the value of $10,000.00 and arises under the Constitution or laws of the United States, more specifically under 16 U.S.C. § 715s(c), as more fully hereinafter appears;

b. 28 U.S.C. § 1361 is that this is an action in mandamus to compel the Secretary of the Interior, the Secretary of the Treasury and the Comptroller General perform their duties under 16 U.S.C. § 715s(c), as more fully hereinafter appears.

2. Intervenor, Kenai Peninsula Borough, is a county-type municipality of the State of Alaska, organized pursuant to Chapter 52, SLA 1963; and assumed the functions of such municipality on January 1, 1964.

3. Defendant, Thomas S. Kleppe, is the Secretary of the Interior and as such is charged with the administration of 16 U.S.C. §715s(c). Defendant, William E. Simon, is Secretary of the Treasury, and Elmer B. Staats is Comptroller General of the United States. Each official has some responsibility to recover for the United States money it has erroneously paid.

4. On December 16, 1941, Executive Order 8979 withdrew and reserved for use as a refuge and breeding ground for moose certain land on the Kenai Peninsula, Alaska. The area withdrawn is all contained within the National Wildlife Refuge System and is known as the Kenai National Moose Range.

5. The Kenai National Moose Range in its entirety is situate within the Kenai Peninsula Borough, a county-type municipal government and a political subdivision of the State of Alaska.

6. Intervenor is informed and believes, and upon such information and belief alleges that since July 1, 1975, defendant, Secretary of the Interior, has received revenue from the sale or other disposition of minerals from the Kenai National Moose Range, Alaska. More specifically, Kenai Peninsula Borough is informed and believes, and upon such information and belief alleges such revenue consists of the proceeds of rentals, royalties and bonuses from certain federal oil and gas leases on lands situate within the Kenai National Moose Range.

7. Pursuant to 16 U.S.C. § 715s(c)(1), defendant, Secretary of the Interior, at the end of the current fiscal year, shall pay from the said receipts described in paragraph 6 (after payment of necessary expenses), including all receipts hereinafter received for the current fiscal year, an amount equal to 25% of such net receipts to

intervenor, Kenai Peninsula Borough; said monies to be expended solely for the benefit of public schools and roads.

8. Intervenor is informed and believes, and upon such information and belief alleges that defendant, Secretary of the Interior, will not pay the 25% share of said net receipts to intervenor. The reasons upon which this allegation is made include, but are not limited to, the following:

a. Intervenor is informed and believes, and upon such information and belief alleges that since July 1, 1965, and possibly earlier, defendant, Secretary of the Interior, has received revenue originating as described in paragraph 6, and that no payment of any portion thereof has been made to intervenor.

b. On March 31, 1976, demand was made upon the General Accounting Office of the United States with a copy of such demand to the Solicitor of the Department of the Interior, that all proceeds from federal oil and gas leases on the Kenai National Moose Range be distributed according to the provisions of 16 U.S.C. § 715s(c). A copy of said letter is attached as Exhibit "A" to this cross-claim. Kenai Peninsula Borough has received no indication that its request will be complied with.

c. Intervenor is informed and believes, and upon such information and belief alleges that in years prior to the fiscal year ending June 30, 1976, the proceeds from federal oil and gas leases situate within the Kenai National Moose Range, Alaska, have been erroneously distributed under color of 30 U.S.C. § 191; more specifically, 37½% thereof to the State of Alaska for the construction and maintenance of public roads or the support of public schools, and 52½% thereof to the State of Alaska to be expended as the legislature directs. Except for the Affidavit of Tim Tafoya filed herein, intervenor has received no indication that the proceeds from such oil and gas leases for the fiscal year ending June 30, 1976, will not be distributed in any manner other than as in prior fiscal years.

9. Intervenor, Kenai Peninsula Borough, is entitled to orders of this Court as follows:

a. Under 28 U.S.C. § 2201, a judgment declaring that Kenai Peninsula Borough is entitled to 25% of the net receipts (after payment of necessary expenses) derived from federal oil and gas leases situate within the Kenai National Moose Range, Alaska, for the fiscal year ending June 30, 1976, all in accordance with 16 U.S.C. § 715s(c).

b. Under 28 U.S.C. § 1361, a judgment in the nature of mandamus compelling defendant, the Secretary of the Interior, to pay to intervenor an amount equal to 25% of the net receipts (after payment of necessary expenses) derived from federal oil and gas leases situate within the Kenai National Moose Range, Alaska, all in accordance with 16 U.S.C. § 715s(c).

## SECOND CLAIM FOR RELIEF

10. Incorporated herein by reference are paragraphs 1 through 5, inclusive, of this cross-claim.

11. Intervenor is informed and believes, and upon such information and belief alleges that since July 1, 1965, and possibly earlier, defendant, Secretary of the Interior, has received revenue from the sale or other disposition of minerals from the Kenai National Moose Range, Alaska. More specifically, Kenai Peninsula Borough is informed and believes, and upon such information and belief alleges such revenue consists of the proceeds of rentals, royalties and bonuses from certain federal oil and gas leases on lands situate within the Kenai National Moose Range.

12. Intervenor is informed and believes, and upon such information and belief alleges that said revenue has been erroneously distributed by defendant, Secretary of the Interior, in that:

a. Under color of 30 U.S.C. § 191, 37½% thereof was paid to the State of Alaska for the construction and

maintenance of public roads or the support of public schools, and 52½% thereof to the State of Alaska to be expended as the legislature directs;

b. 25% of the net receipts from federal oil and gas leases situate in the Kenai National Moose Range, Alaska, (after payment of necessary expenses) for all fiscal years since July 1, 1965, and possibly earlier, should have been paid to Kenai Peninsula Borough by defendant, Secretary of the Interior, in accordance with 16 U.S.C. § 715s(c)(1). Kenai Peninsula Borough has received no revenue pursuant to said section.

13. Defendants, Kleppe, Simon and Staats, jointly and severally have a duty to recover for Kenai Peninsula Borough that portion of 25% of the net receipts from federal oil and gas leases situate within the Kenai National Moose Range, Alaska, (after payment of necessary expenses) heretofore erroneously distributed since July 1, 1965, or before.

14. Intervenor is informed and believes, and based upon such information and belief alleges that said defendants will not perform their duty as set forth in paragraph 13. The reasons upon which this allegation is made include, but are not limited to, the following:

a. Intervenor is informed and believes, and upon such information and belief alleges that since March 16, 1976, or earlier, defendant, Secretary of the Interior, has been aware of the erroneous payments described in paragraphs 11 and 12. Nevertheless, defendant, Secretary of the Interior, has taken no action, known to Kenai Peninsula Borough, to rectify such error.

b. Intervenor is informed and believes, and upon such information and belief alleges that since July 9, 1976, and possibly earlier, defendants, Simon and Staats, have been aware of the erroneous payments described in paragraphs 11 and 12. Nevertheless said defendants have taken no action, known to the Kenai Peninsula Borough, to rectify such error.

15. Intervenor, Kenai Peninsula Borough, is entitled to orders of this court as follows:

a. Under 28 U.S.C. § 2201, a judgment declaring that Kenai Peninsula Borough is entitled to 25% of the net receipts (after payment of necessary expenses) derived from federal oil and gas leases situate within the Kenai National Moose Range, Alaska, for all fiscal years during the period July 1, 1965, through June 30, 1975, all in accordance with 16 U.S.C. § 715s(c).

b. Under 28 U.S.C. § 2201, a judgment declaring that defendants, Secretary of the Interior, Secretary of the Treasury and the Comptroller General, jointly and severally recover for Kenai Peninsula Borough that portion of 25% of the net receipts from federal oil and gas leases situate within the Kenai National Moose Range, Alaska, (after payment of necessary expenses) heretofore erroneously distributed, and thereafter to pay said receipts to Kenai Peninsula Borough, all in accordance with 16 U.S.C. § 715s(c).

c. Under 28 U.S.C. § 1361, a judgment in the nature of mandamus compelling defendants, Secretary of the Interior, Secretary of the Treasury and the Comptroller General, jointly and severally: (1) to recover from plaintiff that portion of 25% of the net receipts from federal oil and gas leases situate within the Kenai National Moose Range, Alaska, (after payment of necessary expenses), heretofore erroneously distributed; and (2) after such recovery to pay the amount thereof due to Kenai Peninsula Borough in accordance with 16 U.S.C. § 715s (c).

THIRD CLAIM FOR RELIEF

16. Incorporated herein by reference are paragraphs 1 through 7, inclusive, 11, 12 and 13 of this cross-claim.

17. The amount of the net receipts from federal oil and gas leases situate within the Kenai National Moose Range, Alaska, from July 1, 1965, and possibly earlier, is unknown to Kenai Peninsula Borough.

18. The manner in which the net receipts from federal oil and gas leases situate within the Kenai National

Moose Range, Alaska, has been distributed, is unknown to Kenai Peninsula Borough.

19. Kenai Peninsula Borough is entitled to an order of this court that defendants, Secretary of the Interior, Secretary of the Treasury and the Comptroller General, and

WHEREFORE, intervenor prays that this court enter judgment granting relief as follows:

## I. AS TO THE ANSWER TO THE COMPLAINT OF THE STATE OF ALASKA:

1. That the complaint be dismissed;
2. That intervenor be awarded costs of suit, including a reasonable attorney's fee;
3. For such other or further relief as may be proper.

## II. AS TO THE COUNTERCLAIM AGAINST THE STATE OF ALASKA:

1. Judgment against the State of Alaska ordering the State to pay to the Kenai Peninsula Borough an amount equal to 25% of the net receipts (after payment of necessary expenses) derived from federal oil and gas leases situate within the Kenai National Moose Range, Alaska, to the extent said sums have been paid to the State of Alaska in violation of the provision of 16 U.S.C. § 715s.
2. Judgment against the State of Alaska ordering the State to account for all monies received by it representing receipts derived from federal oil and gas leases situate within the Kenai National Moose Range, Alaska.
3. For costs of suit, including a reasonable attorney's fee, and for an accounting as set forth in the Cross-Claim.
4. For such other or further relief as the court may deem proper.

III. AS TO THE CROSS-CLAIM:

A. As to the First Claim for Relief:

1. A judgment declaring that plaintiff is entitled to 25% of the net receipts (after payment of necessary expenses) derived from federal oil and gas leases situate within the Kenai National Moose Range, Alaska, for all fiscal years during the period July 1, 1965 through June 30, 1975, all in accordance with 16 U.S.C. § 715s(c).

2. That intervenor be awarded costs of suit, including a reasonable attorney's fee;

3. For such further relief as may be proper.

B. As to the Second Claim for Relief:

1. A judgment declaring that defendants, Secretary of the Interior, Secretary of the Treasury and the Comptroller General, have a duty to recover for intervenor that portion of 25% of the net receipts from federal oil and gas leases situate within the Kenai National Moose Range, Alaska, (after payment of necessary expenses) heretofore erroneously distributed.

2. A judgment in the nature of mandamus compelling defendants, Secretary of the Interior, Secretary of the Treasury and the Comptroller General:

a. To recover for intervenor that portion of 25% of the net receipts from federal oil and gas leases situate within the Kenai National Moose Range, Alaska, (after payment of necessary expenses) heretofore erroneously distributed;

b. After such recovery of the amount of receipts erroneously distributed, or any part thereof, to pay the amount thereof due intervenor in accordance with 16 U.S.C. § 715s(c).

3. That intervenor be awarded costs of suit including a reasonable attorney's fee.

4. For such further relief as may be proper.

C. As to the Third Claim for Relief:

1. A judgment that defendants, Secretary of the Interior, Secretary of the Treasury and Comptroller General render to intervenor an accounting:

a. Itemizing the amount of net revenue by fiscal year, derived from federal oil and gas leases situate within the Kenai National Moose Range, Alaska;

b. Itemizing the manner in which said net revenue has been expended by fiscal year, including:

(1) The amounts paid by defendant, Secretary of the Interior, to the State of Alaska, or any other entity;

(2) The date said payments were made by defendant, Secretary of the Interior, to the State of Alaska, or other entity.

2. That intervenor be awarded costs of suit including a reasonable attorney's fee.

3. For such further relief as may be proper.

D. As to the Fourth Claim for Relief:

1. An order enjoining defendants during the pendency of this action from distributing the net revenue from federal oil and gas leases situate within the Kenai National Moose Range, Alaska, in any manner, or in the alternative, only in accordance with 16 U.S.C. § 715s (c) (1).

Dated at Anchorage, Alaska, this 8 day of November, 1976.

GALLAGHER, CRANSTON & SNOW
Attorneys for Plaintiff and
Intervening Defendant

By /s/ Charles K. Cranston
CHARLES K. CRANSTON
ANDREW R. SARISKY
Borough Attorney
Kenai Peninsula Borough

By /s/ Charles K. Cranston
CHARLES K. CRANSTON

Copy Received this 12 day of Nov., 1976.

/s/ [Illegible]
Attorney for U.S. Atty Off.

Copy Received this 12 day of Nov., 1976.

/s/ A.G.O.—SM
Attorney for ————————

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. A76-94 CIV.

[Filed Feb. 4, 1977]

KENAI PENINSULA BOROUGH, PLAINTIFF

*v.*

THOMAS S. KLEPPE, DEFENDANT

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No. J76-3 CIV.

STATE OF ALASKA, PLAINTIFF

*v.*

THOMAS S. KLEPPE, ET AL., DEFENDANTS
(Consolidated Proceedings)

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# ANSWER OF FEDERAL DEFENDANTS TO CROSS CLAIM BY KENAI PENINSULA BOROUGH

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COME NOW the federal defendants, by and through their undersigned attorney, and by leave of opposing counsel, in response to the Cross Claim asserted herein against them by Intervenor Kenai Peninsula Borough, and, regarding the correspondingly-numbered paragraphs therein, admit, deny and aver:

Defendants have no certain knowledge or information regarding Intervenor's various representations of its information and belief; therefore, federal defendants are unable to admit or deny such general allegations. Federal defendants will, therefore, respond to intervenor's factual allegations, deeming the foregoing sufficient response to each and all of Intervenor's representations regarding its information and belief.

## FIRST CLAIM OF RELIEF

1. Conclusions of law to which no response is required.
2. Defendants lack sufficient knowledge of information upon which to form a belief as to the truth of the allegation, and therefore, deny same.
3. Defendants admit the Secretary of the Interior is charged with administration of 16 U.S.C. § 715s(c), and that Elmer B. Staats is Comptroller General of the United States; defendants allege that Cecil D. Andrus is currently the Secretary of the Interior and that W. Michael Blumenthal is currently the Secretary of the Treasury. Defendants deny remaining allegations.
4. Admit.
5. Admit.
6. Admit.
7. Admit.
8. As funds subject of this proceeding have been placed in escrow pending adjudication of the present controversy and will be paid in accordance with direction and order of the Court, defendants are unable to admit or deny such allegation.

a. Admit.

b. Admit.

c. Defendants admit the proceeds have been distributed in accordance with 30 U.S.C. § 191 to the State of Alaska for the respective purposes and in the respective proportions as alleged; defendants deny such distribution is erroneous; defendants have no certain knowledge or in-

formation as to indications Intervenor may have received regarding distribution of proceeds for the fiscal year ending June 30, 1976, and, therefore are unable to admit or deny such allegation.

9.(a) and (b). Conclusions of law to which no response is required.

10. Federal defendants incorporate by reference their answers herein to Paragraphs 1 through 5, inclusive, of the Cross Claim.

11. Admit.

12. To the extent the allegation is one of fact, defendants deny that said revenues have been erroneously distributed; to the extent such allegation is a conclusion of law, no response is required.

a. Admit.

b. Defendants admit Kenai Peninsula Borough has received no revenue pursuant to 16 U.S.C. § 715s(c)(1); remaining allegations are conclusions of law, to which no response is required.

13. To the extent of factual allegation, defendants deny; and, to the extent such allegations are conclusions of law, no response is required.

14. To the extent of factual allegation, defendants deny; and, to the extent such allegations are conclusions of law, no response is required.

a. Defendant Secretary of Interior admits awareness of the referenced payments but denies such were erroneous; defendant Secretary of Interior admits having taken no action to direct payments otherwise.

b. Defendants admit awareness of the referenced payments but deny such were erroneous; defendants admit having taken no action to direct payments otherwise.

15. Conclusions of law to which no response is required.

THIRD CLAIM FOR RELIEF

16. Defendants incorporate by reference their answers herein to Paragraphs 1 through 7, inclusive, and Paragraphs 11 through 13, inclusive, of the Cross Claim.

17. Federal defendants lack sufficient knowledge or information to form a belief as to the truth of such allegation, and, therefore, deny same.

18. Federal defendants lack sufficient knowledge or information to form a belief as to the truth of such allegation, and, therefore, deny same.

19. Conclusions of law to which no response is required.

Additionally, federal defendants:

A. Deny each and every allegation of the Cross Claim not specifically admitted, denied, or qualified herein, and

DEFENSE

B. Regarding the Second Claim for Relief, allege this Court lacks jurisdiction to compel federal defendants to recover receipts heretofore distributed to the State of Alaska.

WHEREFORE, having fully answered the Cross Claim of Kenai Peninsula Borough, federal defendants pray: that the relief requested of federal defendants herein be denied; and that the Cross Claim herein be dismissed; and that federal defendants be given all such other and further relief as the Court may deem just and proper.

Respectfully submitted this 4th day of February, 1977, at Anchorage, Alaska.

G. KENT EDWARDS
United States Attorney

By: /s/ [Illegible]
For JOHN D. ROBERTS
Assistant U. S. Attorney

AVRUM M. GROSS
Attorney General

FREDERICK H. BONESS
Assistant Attorney General
Department of Law
Pouch K, State Capitol Bldg.
Juneau, Alaska 99811

Attorneys for the Plaintiff
State of Alaska

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Consolidated Civil Actions J76-3 and A76-94

[Filed Feb. 7, 1977]

KENAI PENINSULA BOROUGH, PLAINTIFF

*vs.*

THOMAS S. KLEPPE, DEFENDANT

# ANSWERS OF THE STATE OF ALASKA TO KENAI PENINSULA BOROUGH'S FIRST SET OF INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, The State of Alaska, Plaintiff in one of these consolidated actions, hereby answers the interrogatories of the Kenai Peninsula Borough received by the State of Alaska on December 27, 1976.

*INTERROGATORY NUMBER 1:* Please identify each year during which revenues have been received by the State of Alaska, the source of which has been revenue derived by the United States from Federal Oil and Gas leases situate within The Kenai National Moose Range, Alaska.

*ANSWER:* The State of Alaska has received revenues from the United States under the Mineral Leasing Act of 1920 every year since 1959. The payments made to the State by the United States do not specify the leases for which payment was being made. However, since federal oil and gas leases located within the Kenai National Moose Range were producing oil in 1959 and every year thereafter, the State is certain revenues have been received every year from 1959 to 1975 from leases situate within the Moose Range. Revenues attributed to oil and gas leases in the Kenai Moose Range for the period July 1, 1975 to December 31, 1975, and for the year 1976 have been withheld by the Secretary of the Interior.

*INTERROGATORY NUMBER 2:* Please state by year the amount of revenue received by the State of Alaska the source of which has been revenue derived by the United States from Federal Oil and Gas leases situate within Kenai National Moose Range, Alaska.

*ANSWER:* The State's records show only the total revenues received by the State from the United States. These records do not enable the State to determine what portion of the total revenue is attributable to leases situate within the Kenai National Moose Range.

*INTERROGATORY NUMBER 3:* Please state the manner in which the revenue described in Interrogatory Number 2 was distributed, that is, (a) was any revenue paid to a particular fund or account of the State of Alaska or any agency or department thereof, and if so, to what fund, account or agency and in what amount; (b) was any revenue paid to a political subdivision in the State of Alaska and if so, to what political subdivision and in what amount; and (c) was any revenue paid to or distributed in any other manner not heretofore described and if so, how and to what was it distributed and in what amount.

*ANSWER:* (a) Payments by the United States are made to the Treasurer of the State of Alaska and are deposited directly into the State's General Fund.

(b) No.

(c) No.

*INTERROGATORY NUMBER 4:* What department, bureau, agency or other office of the State of Alaska made the decision as to how the distribution of revenue described in Interrogatory Number 3 was to be made?

*ANSWER:* Not applicable since the funds are deposited directly to the State's general fund.

*INTERROGATORY NUMBER 5:* What was the title of the official or officials making the decisions described in Interrogatory Number 4?

*ANSWER:* Not applicable.

*INTERROGATORY NUMBER 6:* What was the name of the person or persons who made the decision described in Interrogatories 4 and 5?

*ANSWER:* Not applicable.

*INTERROGATORY NUMBER 7:* Are any of the persons identified in Interrogatory Number 6 still living and if so (a) please state the present position, if any, held by such person and (b) the address of each person identified in Interrogatory Number 6.

*ANSWER:* Not Applicable.

*INTERROGATORY NUMBER 8:* Were the revenues described in Interrogatory Number 3 transmitted to the recipient thereof along with any written communication such as a memorandum, letter, telegram or similar communication?

*ANSWER:* As indicated in response to Interrogatory 2 above, State records do not identify payments according to particular leases, hence written communications do not relate specifically to leases located in the Kenai Moose Range. Only total revenue paid to the State are identified. Payments were received by the State twice yearly and each payment was accompanied by a letter stating what the payment was for.

*INTERROGATORY NUMBER 9:* If the answer to Interrogatory Number 8 is yes, please identify each written communcation as to date, sender and recipient and

if you will do so without a request for production, please attach a copy of each such communication to your answers to these interrogatories.

*ANSWER:* Copies of letters (and accompanying attachments) which were transmitted to the State with each payment are attached hereto.

DATED this 31 day of January, 1977, at Anchorage, Alaska.

/s/ George K. Hollet
GEORGE K. HOLLET
Deputy Director
Division of Land and Water Management

SUBSCRIBED AND SWORN TO before me this 31st day of January, 1977.

/s/ [Illegible]
Notary Public for Alaska

My Commission expires: Nov. 30, 1980

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

[Filed Mar. 1, 1977]

Consolidated Actions J-76-3 and A-76-94

KENAI PENINSULA BOROUGH, a municipal corporation,
PLAINTIFF

*vs.*

THOMAS S. KLEPPE, Secretary of the Interior,
DEFENDANT

# ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO FEDERAL DEFENDANT SECRETARY OF THE INTERIOR

Federal Defendant Secretary of the Interior*, answers the interrogatories served on him by plaintiffs on December 21, 1976, as follows:

*INTERROGATORY NUMBER 1:* Please identify each year during which revenues have been received by the United States, or any agency, department or bureau thereof from Federal Oil and Gas Leases situate within the Kenai National Moose Range, Alaska.

*ANSWER:* Revenues from Federal oil and gas leases situated within the Kenai National Moose Range, Alaska, were first received by the Bureau of Land Management (BLM) and/or the U.S. Geological Survey (USGS) and deposited to BLM accounts in fiscal year 1954, and all years subsequent through the current fiscal year.

*INTERROGATORY NUMBER 2:* Please state by year the amount of revenues received by the United States or any agency, department or bureau, thereof, from Federal Oil and Gas leases situated in the Kenai National Moose Range, Alaska.

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* The present Secretary of the Interior is Cecil D. Andrus.

*ANSWER:* Oil and gas revenues collected by BLM and USGS within the Kenai National Moose Range, Alaska, are being identified for fiscal year 1966, and subsequent years. This information has been deposited with the Federal Records Center and efforts to retrieve it are underway. Upon receipt of this information, a supplementary answer will be filed. Revenues prior to fiscal year 1966 predate the period in question (effective date of the amendment to 16 U.S.C. § 715s) and are not readily available.

*INTERROGATORY NUMBER 3:* Please state the manner in which the revenues described in Interrogatory Number 2 was distributed. That is, (a) was any revenue paid to a particular fund of the United States or any agency or department, thereof, and if so, to what agency and what amount; (b) was any revenue paid to the State of Alaska or any of its political subdivisions, and in what amount; and (c) was any revenue paid or distributed in any other manner not heretofore described, and if so, to what agency or entity and in what amount.

*ANSWER:* The revenues described in Interrogatory Number 2 for the period July 1, 1965, through December 18, 1971, were distributed 90 percent to the State of Alaska, and 10 percent to the General Fund of the U.S. Treasury. After the date of the Alaska Native Claims Settlement Act (ANCSA) (Public Law 92-203, dated December 18, 1971), the computation of the State (90 percent) and Federal (10 percent) shares was made on net revenues after the deduction of the amount paid into the Alaska Native Fund. Section 9(d) of the ANCSA states, "All bonuses, rentals, and royalties received by the United States after the date of enactment of this Act from the disposition by it of such minerals in public lands in Alaska shall be distributed as provided in the Alaska Statehood Act, *except that prior to calculating the shares of the State and the United States* as set forth in such Act, (1) a royalty of 2 percentum upon the

gross value of such minerals produced (as such gross value is determined for royalty purposes under the sale or lease), and (2) 2 percentum of all rentals and bonuses shall be deducted and paid into the Alaska Native Fund. *The respective shares of the State and the United States shall be calculated on the remaining balance.*" (Underscoring supplied.)

The oil and gas revenues described in Interrogatory No. 2 were included in the semiannual payments under Section 35 of the Mineral Leasing Act of 1920. The total revenues under that Act for the period 1966 through 1976, and payment thereof, is set forth below.

| Fiscal Year | Oil & Gas Revenues | Federal Share (10%) | State Share 90% | Alaska Native Fund |
|---|---|---|---|---|
| 1966 | $8,605,227.34 | $860,552.74 | $7,744,704.60 | $ |
| 1967 | 8,485,438.41 | 848,543.84 | 7,636,894.57 | |
| 1968 | 8,762,855.50 | 876,285.55 | 7,886,569.95 | |
| 1969 | 9,028,783.83 | 902,878.38 | 8,125,905.45 | |
| 1970 | 9,207,849.58 | 920,784.96 | 8,287,064.62 | |
| 1971 | 8,910,283.41 | 891,028.34 | 8,019,255.07 | |
| 1972 | 8,144,513.62 | 766,169.39 | 6,895,524.46 | 482,819.77 |
| 1973 | 7,130,855.72 | 628,748.33 | 5,658,735.00 | 843,372.39 |
| 1974 | 9,870,036.12 | 857,056.46 | 7,713,508.13 | 1,299,471.53 |
| 1975 | 9,557,603.26 | 816,958.31 | 7,352,624.74 | 1,388,020.21 |
| 1976 | 2,323,022.96 | 204,524.33 | 1,840,718.89 | 277,779.74 |
| 1976 TQ | 211,901.52 | 18,118.08 | 163,062.69 | 30,720.75 |

When the controversy arose in 1975 over the deposit and distribution of oil and gas revenues collected on wildlife refuge lands, revenues collected in the Kenai National Moose Range were deposited to a suspense account pending determination of the proper disposition of such revenue. Currently we are holding $5,688,710.00 for fiscal year 1976, and $900,980.85 for the fiscal year 1976 Transition Quarter, in the suspense account.

*INTERROGATORY NUMBER 4:* What department, bureau, agency or other office of the United States made the decision as to how the distribution of revenue described in Interrogatory Number 3 was to be made?

*ANSWER:* Disposition of the revenues described in Interrogatory No. 3 was made by the Bureau of Land Management in accordance with the direction in Section 6 of Public Land Order 3400, to the effect that these lands are subject to the mineral leasing laws.

*INTERROGATORY NUMBER 5:* What was the title of the official or officials making the decisions described in Interrogatory Number 4?

*ANSWER:* The official making the decision described in Interrogatory No. 4 was the Secretary of the Interior.

*INTERROGATORY NUMBER 6:* What was the name of the person or persons who made the decision described in Interrogatories 4 and 5?

*ANSWER:* The name of the Secretary of the Interior at that time was Stewart L. Udall.

*INTERROGATORY NUMBER 7:* Are any of the persons identified in Interrogatory Number 6 still living and if so (a) please state the present position, if any, held by such person and (b) the address of each person identified in Interrogatory Number 6.

*ANSWER:* Mr. Udall is still living. He is of counsel to Duncan, Brown, Weinberg and Palmer, 1700 Pennsylvania Ave., N.W., Washington, D.C. 20006.

*INTERROGATORY NUMBER 8:* Were the revenues described in Interrogatory Number 3 transmitted to the recipient thereof along with any written communication such as a memorandum, letter, telegram or similar communication?

*ANSWER:* Yes. The revenues described in Interrogatory No. 3 were transmitted to the Treasurer of the State of Alaska on a copy of Standard Form 1034, Public Voucher for Purchases and Services Other Than Personal, with supporting schedules. Transfers to the Alaska Native Fund were made on Standard Form 1081, Voucher and Schedule of Withdrawals and Credits. Transfers of the Federal share were made on Standard Form 224,

Statement of Transactions. Treasury has the original copies of these documents.

*INTERROGATORY NUMBER 9:* If the answer to Interrogatory Number 8 is yes, please identify each written communication as to date, sender and recipient and if you will do so without a request for production, please attach a copy of such communication to your answers to these interrogatories.

*ANSWER:* The following mineral leasing payments were made by the Chief, Division of Finance, Bureau of Land Management, to the Treasurer of the State of Alaska:

| Fiscal Year | Period Covered | Date of Payment | Amount of Payment | Total |
|---|---|---|---|---|
| 1966 | 7/1-12/31/65 | 2/14/66 | $3,352,374.23 | |
| | 11/1-12/31/65 | 6/17/66 | 556,056.69 | |
| | 1/1- 6/30/66 | 8/24/66 | 3,836,273.68 | $7,744,704.60 |
| 1967 | 7/1-12/31/66 | 2/15/67 | 3,865,506.16 | |
| | 1/1- 6/30/67 | 8/29/67 | 3,771,388.41 | 7,636,894.57 |
| 1968 | 7/1-12/31/67 | 2/ 1/68 | 3,739,108.90 | |
| | 1/1- 6/30/68 | 8/ 9/68 | 4,147,461.05 | 7,886,569.95 |
| 1969 | 7/1-12/31/68 | 2/ 3/69 | 3,631,323.32 | |
| | 1/1- 6/30/69 | 8/11/69 | 4,494,582.13 | 8,125,905.45 |
| 1970 | 7/1-12/31/69 | 2/ 6/70 | 3,744,987.22 | |
| | 1/1- 6/30/70 | 8/12/70 | 4,542,077.40 | 8,287,064.62 |
| 1971 | 7/1-12/31/70 | 2/ 4/71 | 4,106,641.05 | 8,019,255.07 |
| | 1/1- 6/30/71 | 8/18/71 | 3,912,614.02 | |
| 1972 | 7/1-12/31/71 | 2/ 1/72 | 3,903,628.56 | |
| | 1/1- 6/30/72 | 8/ 9/72 | 2,991,895.90 | 6,895,524.46 |
| 1973 | 7/1-12/31/72 | 1/26/73 | 2,952,558.99 | |
| | 1/1- 6/30/73 | 8/ 8/73 | 2,706,176.01 | 5,658,735.00 |
| 1974 | 7/1-12/31/73 | 1/22/74 | 3,297,876.93 | |
| | 1/1- 6/30/74 | 8/ 9/74 | 4,415,631.20 | 7,713,508.13 |
| 1975 | 7/1-12/31/74 | 1/21/75 | 3,886,920.25 | |
| | 1/1- 6/30/75 | 8/11/75 | 3,465,704.49 | 7,352,624.74 |
| 1976 | 7/1-12/31/75 | 2/13/76 | 833,750.05 | |
| | 1/1- 6/30/76 | 9/ 1/76 | 1,006,968.84 | 1,840,718.89 |
| 1976 TQ | 7/1- 9/30/76 | 12/20/76 | 163,062.69 | 163,062.69 |

Copies of documentation are enclosed.

/s/ William S. Downey
WILLIAM S. DOWNEY
Assistant Chief,
Division of Finance
Bureau of Land Management

Subscribed and sworn to before me, a Notary Public for the District of Columbia, this 3rd day of February 1977.

/s/ [Illegible]
Notary Public

My commission expires: April 14, 1977

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

Consolidated Actions J-76-3 and A-76-94

KENAI PENINSULA BOROUGH, a municipal corporation,
PLAINTIFF

*vs.*

THOMAS S. KLEPPE, Secretary of the Interior,
DEFENDANT

SUPPLEMENTARY ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO FEDERAL DEFENDANT SECRETARY OF THE INTERIOR

Federal Defendant Secretary of the Interior further answers the interrogatories served on him by plaintiffs on December 21, 1976, as follows:

*INTERROGATORY NUMBER 2:* Please state by year the amount of revenues received by the United States or any agency, department or bureau, thereof, from Federal Oil and Gas leases situated in the Kenai National Moose Range, Alaska.

ANSWER:

| | |
|---|---|
| 1966 | $ 3,810,410.21 |
| 1967 | 4,256,583.96 |
| 1968 | 5,383,799.62 |
| 1969 | 5,332,969.05 |
| 1970 | 5,211,852.61 |
| 1971 | 4,874,585.54 |
| 1972 | 4,438,285.70 |
| 1973 | 4,078,699.99 |
| 1974 | 7,378,051.93 |
| 1975 | 6,771,147.28 |
| 1976 | 5,703,200.14 |
| Total | $57,239,586.03 |

The casefiles on nine leases remain unretrieved from the Federal Records Center. When located, this interrogatory will be further supplemented.

/s/ William S. Downey
WILLIAM S. DOWNEY
Assistant Chief,
Division of Finance
Bureau of Land Management

Subscribed and sworn to before me, a Notary Public for the District of Columbia this 15th day of April, 1977.

/s/ [Illegible]

My commission expires: 8/14/78

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

Consolidated Actions J-76-3 and A-76-94

KENAI PENINSULA BOROUGH, a municipal corporation,
PLAINTIFF

*vs.*

THOMAS S. KLEPPE, Secretary of the Interior,
DEFENDANT

# SECOND SUPPLEMENTAL ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO FEDERAL DEFENDANT SECRETARY OF THE INTERIOR

Federal Defendant Secretary of the Interior further answers the interrogatories served on him by plaintiffs on December 21, 1976, as follows:

*INTERROGATORY NUMBER 2:* Please state by year the amount of revenues received by the United States or any agency, department or bureau, thereof, from Federal Oil and Gas leases situated in the Kenai National Moose Range, Alaska.

ANSWER:

| | |
|---|---|
| 1966 | $ 3,813,290.21 |
| 1967 | 4,257,873.96 |
| 1968 | 5,385,099.62 |
| 1969 | 5,334,042.39 |
| 1970 | 5,214,962.71 |
| 1971 | 4,876,499.12 |
| 1972 | 4,438,305.70 |
| 1973 | 4,078,699.99 |
| 1974 | 7,378,051.93 |
| 1975 | 6,771,147.28 |
| 1976 | 5,703,200.14 |
| Total | $57,251,173.05 |

/s/ William S. Downey
WILLIAM S. DOWNEY
Assistant Chief,
Division of Finance
Bureau of Land Management

Subscribed and sworn to before me, a Notary Public for the District of Columbia this 25th day of April, 1977.

/s/ [Illegible]
Notary Public

My commission expires: April 14, 1982

UNITED STATES
DEPARTMENT OF THE INTERIOR

Office of the Solicitor
Washington 25

M. 34516. August 5, 1946

The Honorable

The Secretary of the Interior.

My dear Mr. Secretary:

The Director of the Fish and Wildlife Service has asked to be advised whether there is legal authority for the Secretary of the Interior, through the Director of the Fish and Wildlife Service, to enter into leases for the drilling for oil on *acquired* lands constituting wildlife refuges.

It is my opinion that there is legal authority to do so.

The authority for the Secretary of the Interior, or the Director of the Fish and Wildlife Service, as his agent, to grant mineral leases, is derived from section 401 of the act of June 15, 1935 (49 Stat. 383), which amended the Migratory Bird Conservation Act, approved February 18, 1929 (45 Stat. 1222, 16 U.S.C. sec. 715), and which provides as follows: [1]

> "That 25 per centum of all money received during each fiscal year from the sale or other disposition of surplus wildlife, or of timber, hay, grass, or other spontaneous products of the soil, shell, sand, or gravel, *and from other privileges or refuges* established under the Migratory Bird Conservation Act of Feb-

[1] The Mineral Lands Leasing Act of 1920 (41 Stat. 437, 30 U.S.C. sec. 22), as amended, is not applicable, since acquired, not public domain, lands are involved. 40 Op. Atty. Gen. No. 1, January 3, 1941; see also *Chiles P. Plummer*, departmental decision, February 24, 1945 (A. 23988).

ruary 18, 1929, or under any other law, proclamation, or Executive Order, administered by the Bureau of Biological Survey of the United States Department of Agriculture,[2] shall be paid at the end of such year by the Secretary of the Treasury to the county or counties in which such refuge is situated, to be expended for the benefit of the public schools and roads in the county or counties in which such refuge is situated: *Provided,* That when any such refuge is in more than one State or Territory or county or subdivision, the distributive share to each from the proceeds of such refuge shall be proportional to its area therein: *Provided further,* That the disposition or sale of surplus animals, and products, *and the grant of privileges on said wildlife refuges may be made upon such terms and conditions as the Secretary of Agriculture shall determine to be for the best interests of government* or for the advancement of knowledge and the dissemination of information regarding the conservation of wildlife, including sale in the open market, exchange for animals of the same or other kinds, and gifts or loans to public or private institutions for exhibition or propagation: *And provided further,* That out of any moneys received from the grant, sale, or disposition of such animals, products, or privileges, or as a bonus upon the exchange of such animals the Secretary of Agriculture is authorized to pay any necessary expense incurred in connection with and for the purpose of effecting the removal, grant, disposition, sale, or exchange of such animals, products, or privileges; and in all cases such expenditures shall be deducted from the gross receipts of the refuge before

[2] Section 4(f)(h) of Reorganization Plan No. II, effective July 1, 1939 (53 Stat. 1433, 1434; 4 F.R. 2731), transferred the functions of the Secretary of Agriculture relating to the conservation of wildlife, game, and migratory birds to the Secretary of the Interior.

the Secretary of the Treasury shall distribute the 25 per centum thereof to the States as hereinabove provided." (Emphasis supplied.)

The enumeration without qualification of the various categories of resources from the sales of which "25 per centum of all money received during each fiscal year" is to be derived and paid in part to the various States, I believe was intended, in the circumstances, to encompass such privileges as easements or rights-of-way for minerals or other exploratory work on acquired migratory bird refuge lands, provided, of course, that there would result no derogation from the primary purpose for which such refuges are established. The authority of the Director, Fish and Wildlife Service, to grant applications for the drilling for oil and gas on *public domain* lands is acknowledged. Disallowance of past applications for such privileges has been based upon the ground of the lack of authority, but upon a finding that operations following the discovery of oil and gas would virtually destroy the usefulness of the particular refuge as a sanctuary for bird life. See *Arthur P. Wilcox*, Departmental Decision, June 13, 1945 (A. 24042); *Imogene C. Brooks*, Departmental Decision, April 9, 1945 (A. 23986). There accordingly is nothing novel or anomalous presented by a proposal to drill for oil in a wildlife refuge. Therefore, in the absence of a specific direction against such activity on *acquired* lands as distinguished from public domain lands, no basis appears for concluding that such a prohibition exists.

That there was vested in the Secretary of Agriculture authority now transferred to the Secretary of the Interior, to permit, in his discretion, within defined limits, the continuance after acquisition of operations involving mineral resources on acquired lands, where such operations were in existence at the time of their acquisition, is clear.[3]

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[3] Section 5 of the act of February 18, 1929, *supra*, provided for the acquisition of areas by purchase, rental, gift or devise for use

Since lands of all three derivations are included in refuges, it is difficult to rationalize a conclusion that would permit drilling for oil on the public domain portion, and the continued drilling for oil where such operations existed at the time of acquisition, but prohibit drilling on the acquired portion which had not been drilled prior to its acquisition.

There is nothing in the very meager legislative history of the Migratory Bird Conservation Act, as amended, *supra*, requiring such a construction. The language reflects that the drafsmen, of the 1935 amendatory act in particular, followed closely, although with considerable condensation, the pattern of legislation previously enacted with respect to the national forest reservations, where drilling for oil on both public domain and acquired lands is authorized. While the only formal comment on section 401, *supra*, is concerned with the disposition to be made of revenues derived from the refuges more so than with the precise methods of such derivation, it nevertheless reflects what appears to have been a general understanding that migratory bird refuges were intended to be regarded as anologous in their administrative aspects to the national forest reservations.[4]

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as sanctuaries. Section 6 provided for the securing of safe title thereto in the United States and that the acquisition of such areas by the United States "*shall in no case be defeated because of rights-of-way, easements, and reservations which from their nature will in the opinion of the Secretary of Agriculture in no manner interfere with the use of the areas* so encumbered *for the purposes of this Act*; . . . subject to rules and regulations prescribed from time to time by the Secretary of Agriculture . . ." (Emphasis supplied). See also sections 302 and 304 of the amendatory 1935 act, *supra*.

[4] In H. Rept. No. 876, of March 16, 1934 (74 Cong., 1st Sess.), which accompanied H.R. 7982, enacted into the amendatory law of June 15, 1935 (49 Stat. 382), the following explanation occurs under Title IV, governing "Participation of States in Revenue from Certain Wildlife Refuges:" "The purpose of this Title is to authorize payment to the States of 25 percent of any revenue that

In view of the foregoing, it is my opinion that the Secretary of the Interior may enter into leases for the drilling for oil on acquired lands included within wildlife refuges.

Respectfully,

(Sgd) Felix S. Cohen,
Acting Solicitor.

Approved: August 5, 1946.

(Sgd) Oscar L. Chapman,
Acting Secretary of the Interior.

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may be derived from certain wildlife refuges and reservations administered by the Department of Agriculture. *It is the application* to these refuges *of the plan that has obtained under Congressional legislation for many years with respect to participation of the various States in revenues from the national forests, and is* thought to be equitable and fair to the states". (Emphasis supplied). See also S. Rept. No. 822, of May 13, 1935 (74th Cong., 1st Sess.) to the same effect.

CENTRAL FILES COPY

[SEAL]

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
Washington 25, D.C.

to Secretary

Jul. 30, 1951
for signature

R-2
Oil and Gas

Aug. 14, 1951

to Secretary

Aug. 9, 1951
for signature

My dear Mr. Warren:

Your opinion is requested on the proper disposition of receipts from oil and gas leases granted by the Department in accordance with the provisions of the Mineral Leasing Act for Acquired Lands of August 7, 1946 (61 Stat. 913) and Section 401, Title IV of the Act of June 15, 1935 (49 Stat. 383). In addition and for the reasons set out herein, a reconsideration of your opinion of March 18, 1942 (21 Comp. Gen. 873) also is requested.

During the fiscal year 1951, approximately $300,000, representing rents and royalties due the United States under the terms of oil and gas leases covering certain lands within the Delta National Wildlife Refuge, were deposited to the receipt account "46019 receipts under Migratory Bird Conservation Act" for later disposition in accordance with Section 401 of the Act of June 15, 1935 *supra*. Those provisions of the Mineral Leasing Act for Acquired Lands and of Section 401 of the Act of

1935 regarding the disposition of receipts are such that no question concerning the disposition of these receipts would be raised now were it not for the possible application of the problem of certain language occurring in two prior decisions of your office, both of which concern the construction of Section 401 of the Act of 1935. Because of this situation, disposition of these receipts will be deferred pending a clarifying decision from your office.

The Mineral Leasing Act for Acquired Lands provides that all deposits of coal, phosphate, oil, oil shale, gas, sodium potasium and sulphur which are owned or which may hereafter be acquired by the United States and which are within the lands acquired by the United States, exclusive of certain lands not of interest in determining the present question, "may be leased by the Secretary under the same conditions as contained in the leasing provisions of the mineral leasing laws, subject to the provisions hereof." The lands within the Delta National Wildlife Refuge now covered by the leases referred to are acquired lands within the meaning of the definitions appearing in the Mineral Leasing Act for Acquired Lands. Section 6 of that Act provides in part as follows: "All receipts derived from leases issued under the authority of this act shall be paid into the same funds or accounts in the Treasury and shall be distributed in the same manner as prescribed for other receipts from the lands affected by the lease, the intention of this provision being that this act shall not affect the distribution of receipts pursuant to legislation applicable to such lands." Section 401 of the Act of June 15, 1935, provides that "Twenty-five percent of all money received during each fiscal year from the sale or other disposition of surplus wildlife, or timber, hay, grass, or other spontaneous products of the soil, shell, sand, or gravel, and from other privileges on refuges established under the Migratory Bird Conservation Act of February 18, 1929, or under any other law, proclamation, or Executive order, * * * shall be paid at the end of such year by the Secretary of the Treasury

to the county or counties in which such refuge is situated * * *." By the provisions of the General Appropriation Act of 1951 (P.L. 759, 81st Cong.) the balance of such receipts have been made available for expenditure in the management of national wildlife refuges, and for certain other purposes. Thus, the net result of the provisions referred to would appear to make the receipts due the United States under the terms of the oil and gas leases available for disposition in accordance with Section 401 of the Act of 1935 as amended by the General Appropriation Act of 1951. This view is further supported by the Report of the House Committee on Public Lands on H.R. 3022, 80th Congress (the Mineral Leasing Act for Acquired Lands), which contains the following statement: "Under the proposed act, receipts would be disposed of in the same manner as other receipts *on account of nonmineral uses of same land*, and protection is also afforded for safeguarding outstanding rights." (Emphasis supplied.)

In the decision of your office dated March 18, 1942 (21 Comp. Gen. 873), there was for consideration the question of the disposition of the receipts by the United States of a share in royalties received by third persons on account of the production of oil and gas, the title to which was reserved to such third persons at the time of the conveyance to the United States of title to the surface of the lands wherein the oil was found. The question here is the disposition of receipts arising out of a grant by the United States of a privilege and therefore is not necessarily similar. However, the language of at least a portion of the decision is such as to indicate a view that royalties from oil and gas leases granted by the United States also are not receipts of the class indicated to be disposed of in accordance with the provisions of Section 401, but rather, are receipts to be credited to miscellaneous receipts of the Treasury.

After citing in full Section 401 of the Act of June 15, 1935, certain provisions of Section 301 of the same Act,

several sections of the regulations governing the administration of wildlife refuges, and portions of the legislative history of Section 401, the decision enters into a somewhat interesting discussion of the definition of the words "spontaneous products" and "soil" as they appear in Section 401, and of the application of the doctrine of *ejusdem generis* to the general phrase following the enumeration "timber, hay, grass." With respect to the definitions, the decision concludes (1) that the word "spontaneous" should be given its natural meaning, (2) that "products" means things produced, (3) that "soil" refers to the face or surface of the ground, and finally, that "oil" is a mineral and therefore is not a "spontaneous product of the scil." It also concludes that under the doctrine *ejusdem generis* the general phrase "other spontaneous products of the soil" following the enumeration "timber, hay, grass" can include only products of like kind or character which would eliminate oil. From this discussion, together with a reference to the fact that the oil in question was not the property of the government but had been reserved to the grantor in the deed to the United States, the decision holds, without further explanation or reasoning, that the receipts should not be deposited to the credit of the account "146019 Receipts under Migratory Bird Conservation Act."

With respect to the decision of 1942 as well as to the operation now presented, it is interesting and pertinent to note that the excerpts from the legislative history included in that decision refer to "any revenue" that may be derived from wildlife refuges and reservations, and point out that the legislation, i.e., Section 401, is intended to apply to these refuges the same plan that was obtained under Congressional legislation for the participation by the states in revenues from national forests. It will be recalled that the States participation in virtually all revenues arising from the administration of the national forest. Thus, the intention of the legislators is

quite clear and does not support the conclusions of the decision of 1942 on this point.

It is quite true that the doctrine of *ejusdem generis* is a useful tool or statutory interpretation and should be given primary consideration in attempting to determine the exact meaning of a particular statute, but it is neither final nor conclusive. To ascertain the meaning of the words of a statute, they may be submitted to the test of all appropriate canon of statutory construction, of which the rule of *ejusdem generis* is only one. If upon reconsideration of the context and the objects sought to be distributed and of the act as a whole, it adequately appears that the general words were not used in the restricted sense suggested by the rule, we must give effect to the conclusion afforded by the wider view in order that the will of the Legislature shall not fail." Helvering v. Stockholm & Bank, 293 U.S. 84, 88-89. In the decision of 1942, the doctrine was applied, perhaps properly, to the general phrases "all other spontaneous products of the soil," as that phrase follows the enumeration of "timber, hay, grass." However, that enumeration and its following general phrase is but one part of a larger enumeration also followed by a general phrase so that the result of the first application cannot be used, within the limits of any of the rules of statutory construction, to determine the scope of either the larger enumeration or of the general phrase following such larger enumeration.

Section 401 enumerates three more or less specific classes of things and one general class of things, the revenue from the sale or disposition of which is to be shared with the States. The first is wildlife; the second is timber, hay, grass, or other spontaneous products; the third is shell, sand, or gravel; and, the fourth is "other privileges." According to Sutherland, Statutory Construction, Third Edition, Section 4910, the doctrine of *ejusdem generis* applies when the following five conditions exist: (1) the statute contains an enumeration by specific

words; (2) the members of the enumeration constitute a class; (3) the class is not exhausted by the enumeration; (4) a general term follows the enumeration; and, (5) there is not clearly manifested an intent that the general term be given a broader meaning than the doctrine requires. Conversely, Sutherland states, Section 4912, "If no enumeration is attempted, if terms preceding the general term are themselves general, or if the members of the enumeration, although specific, are essentially diverse in character, the inference that the legislature attached to the general term a restricted meaning, *ejusdem generis* with preceding specific terms, does not arise." That there is an enumeration of a sort cannot be denied. The members of this enumeration do not constitute a class, however, since the several classes of things do not possess any characteristic features common to all. This is an animal, which term is generic in itself; the second is "spontaneous products of the soil" which, again, may be generic; and the third is mineral. Again, there is clearly manifested in the remainder of the statute an intent that the general term be given a broader meaning than the doctrine requires. This follows both from the fact that there would be a violation of a superior rule of statutory construction if no effect is to be given to the general term "and from other privileges on refuges", and from the fact that the statute itself in several places discloses an intent to give the term "privileges" a characterization separate and apart from that associated with the other terms.

Although Congress must have intended that the term "other privileges" include the acquisition or use of things not specifically enumerated, application of the doctrine in the manner set out in the 1942 decision precludes giving those words an effect whatsoever. In contrast the statute in at least three places makes reference in particular to "animals," "products" and "privileges." Such references recognize differentiation or diversity in character of the members of the original enumeration and

also indicates rather clearly the legislative intent to permit the State to share in revenue from "privileges" as distinguished from animals and products. Again if not so construed the use of the term "privilege" is superfluous since acquisition or use of animals or products is, strictly speaking, a privilege.

One other point perhaps should be mentioned both in connection with disposition of receipts from oil and gas leases issued by the United States and covering refuge lands in connection with the decision of 1942. Oil and gas leases generally are either or both the grant of a right to prospect for and take oil *and* the sale of oil produced. As such an oil and gas lease may be either or both a grant of a privilege and a sale of a mineral. However, the exclusive right which the landowner has to explore beneath his surface and reduce any oil or gas thereunder to possession may be granted or accepted and then so severed is in the nature of a profit a prendre. See Tiffany on Real Property, Third Edition, Section 589. A profit a prendre involves primarily a power to acquire by severance or removal from another's land something or things previously constituting a part of the land. As instances of profits a prendre may be mentioned rights to take from another's land and so acquire as one's own, wood, herbidge or coal or other minerals. Tiffany, Real Property, Third Edition, Section 839. With these definitions in mind it is rather clear that receipts in the nature of rents and royalties from oil and gas leases which have been granted by the United States are receipts from the grant of privileges with respect to the use of refuge land of the nature specifically covered by Section 401 of the Act of June 15, 1935, and are to be credited to refuge receipts.

In view of the above it is the opinion of this department that rents and royalties from oil and gas leases which have been granted by the United States are receipts from the grant of privileges with respect to the use of refuge lands, of the nature specifically covered by Section 401 of the Act of June 15, 1935, and are to be

disposed of in accordance with the provisions of that Section.

Mention also has been made of another decision of your office, the language of which might possibly be construed as affecting the initial position presented in this letter. That reference is to the decision of July 1, 1949 (29 Comp. Gen. 1), which held that receipts accruing from the operation of the so-called Industrial Unit of the Crab Orchard National Wildlife Refuge were to be credited to miscellaneous receipts and were not for disposition in accordance with the provisions of Section 401. Again, in this decision an attempt was made to apply the doctrine of *ejusdem generis* to the phrase "other privileges" in a manner that is wholly unsupported by the decisions of the court. As pointed out previously the doctrine cannot apply to an enumeration of things having diverse characteristics. The decision also mentioned the provisions of Section 321 of the Act of June 30, 1932 and concluded that this section constituted a "specific requirement" which was not overcome by the provisions of Section 401. It seems that such a conclusion is questionable because the phrase "except as otherwise specifically provided by law" characterizes Section 321 as general legislation the provisions of which are not in conflict with legislation dealing with a specific subject matter, such as Section 401. The decisions on this point are so numerous it seems hardly necessary to refer to any particular one. Because of this and, in any event, because that part of the conclusion was coupled with the thought that "privileges" did not include the rental of buildings, it is requested that this decision also be reconsidered at this time.

Your early consideration of the problem presented will be appreciated.

Sincerely yours,

/s/ Vernon D. Northrop
Administrative Assistant Secretary

Hon. Lindsay C. Warren
Comptroller General
of the United States
Washington 25, D.C.

COMPTROLLER GENERAL OF
THE UNITED STATES
Washington 25

Oct. 10, 1951

[Illegible]

The Secretary of the Interior

Dear Mr. Secretary:

Reference is made to letter of August 14, 1951, from your Administrative Assistant Secretary, requesting an opinion concerning the disposition of receipts from oil and gas leases granted by the Department of the Interior in accordance with the provisions of the Mineral Leasing Act for Acquired Lands, approved August 7, 1947, 61 Stat. 913, on lands within the Delta National Wildlife Refuge.

It is stated that the leases involve acquired lands within the meaning of the act cited above, which act is designed, generally, to promote and encourage the development of the ore, gas, and other minerals on the acquired lands of the United States on a uniform basis under the jurisdiction of the Department of the Interior. Section 6 of said act 61 Stat. 915 provides in part as follows:

> "SEC. 6. All receipts derived from leases issued under the authority of this Act shall be paid into the same funds or accounts in the Treasury and shall be distributed in the same manner as prescribed for other receipts from the lands affected by the lease, the intention of this provision being that this Act shall not affect the distribution of receipts pursuant to legislation applicable to such lands: *Provided, however*, That receipts from leases or permits for minerals in lands set apart for Indian use, including lands the jurisdiction of which has been transferred to the Department of the Interior by the Executive order for Indian use, shall be deposited in

a special fund in the Treasury until final disposition thereof by the Congress."

Section 401 of the act of June 15, 1935, 49 Stat. 383, applicable to such lands, provides that:

> "SECTION 401. That 25 per centum of all money received during each fiscal year from the sale or other disposition of surplus wildlife, or of timber, hay, grass, or other spontaneous products of the soil, shell, sand, or gravel, and from other privileges on refuges established under the Migratory Bird Conservation Act of February 18, 1929, or under any other law, proclamation, or Executive order, administered by the Bureau of Biological Survey of the United States Department of Agriculture, shall be paid at the end of such year by the Secretary of the Treasury to the county or counties in which such refuge is situated, to be expended for the benefit of the public schools and roads in the county or counties in which such refuge is situated * * *."

It is stated that it is the view of your Department that the receipts here in question should be disposed of in accordance with section 401, *supra*, but that some doubt in the matter arises because of a previous ruling by this Office with respect to the disposition of somewhat similar receipts, which is published in 21 Comp. Gen. 873 wherein it was held quoting from the syllabus) that:

> "Any moneys received by the United States pursuant to a deed, under which the government acquired land for a wildlife refuge, providing for the payment of a royalty to the United States for all oil, gas, sulphur, or other minerals recovered and saved from the land by the grantor are not receipts 'from the sale or other disposition of * * * spontaneous products of the soil's on wildlife refuges 25 percent of which is required by section 401 of the act of June 13, 1935, to be distributed to the county

or counties in which the refuge is located, but are receipts inuring to the benefit of the United States and are for handling accordingly."

Such decision concerned the question of the disposition of receipts received by the United States as a share in royalties received by third persons on account of the production of oil and gas, the title to which was reserved to such third persons at the time of the conveyance to the United States of title to the surface of the lands wherein the oil was found. The question now presented concerns the disposition of receipts derived from leases granted by the United States on acquired lands the grant of which contains no such reservation.

While the language contained in such earlier decision may be construed as requiring the receipts considered herein to be covered in the Treasury of Miscellaneous receipts it now appears that, in view of section 6 of the Mineral Leasing Act for Acquired Lands, *supra*, the Congress intended the counties in which such acquired lands are located to share in the distribution of receipts from oil and gas leases such as here involved. Our view as stated in your letter, is supported by a statement contained in Report No. 550, House Committee on Public Lands, which accompanied H.R. 3022, 80th Congress, which bill subsequently was enacted as the mineral leasing Act for Acquired Lands, reading that "Under the proposed law receipts would be disposed of in the some manner as other receipts "on account of nonmineral uses of the same land, and protection is also provided for safeguarding outstanding rights."

Accordingly, it appears that receipts from oil and gas leases granted in accordance with the Mineral Leasing Act for Acquired Lands properly calls for disposition in accordance with section 401 of the act of June 15, 1935.

In view of such holding, it is not necessary in disposing of the instant action to now reconsider the opinion appearing in 21 Comp. Gen. 873 as requested by you. In this connection it is noted that the Interior Department

Appropriation Act, 1951, 64 Stat. 693, contains a provision authorizing amounts equal to 75 per centum of the net proceeds received during the next fiscal year and each fiscal year thereafter under the provisions of section 401 of the act of June 15, 1935, to be used for management of national wildlife refuges and to remain available until expended. Since the decision has been in effect for approximately ten years without any reason having been raised either by the counties in which the refuges are located or by your Department until the present time, it may be that reconsideration of such decision is now requested by you with the view that such receipts may be made available for management purposes. However, your letter contains no new facts or arguments which were not fully considered by this Office at the time such decision was rendered. Thus, we find no basis now for a conclusion different from that reached therein

You request also that the decision appearing in 29 Comp. Gen. 1, holding that rentals from public buildings located on wildlife refuges for depositing to the Treasury as miscellaneous receipts rather than for disposition under section 401 of the act of June 15, 1935, be reconsidered. In this connection you contend that the doctrine of ejusdem generis may not properly be applied to the items enumerated in section 401 and that it is questionable that the term "other privileges" did not include the rental of buildings. The decision that receipts from rental of public buildings located on wildlife refuges must be deposited in miscellaneous receipts was based primarily on the provisions of section 22 of the act of June 30, 1932, 47 Stat. 412, which specifically requires "that all moneys derived from the rental of public buildings shall be collected and covered into the Treasury as miscellaneous receipts. In this connection it is a well established rule of statutory construction that an exception to a general requirement in a statute is to be construed literally. In other words any doubt is to be resolved in favor of the general provision and against the exception.

Since, as stated in such decision, nothing is found in the legislative history of section 401 that indicates that rentals of public buildings were intended to be included in the term "other privileges" and since the receipts specifically generated in section 401 are in no way similar or related to the receipts here in question the doubt in the matter must be resolved in favor of the general requirement that rentals from public buildings be deposited and entered into the Treasury of the United States as miscellaneous receipts. Accordingly, the decision appearing in 29 Comp. Gen. 1 is affirmed.

Sincerely yours,

/s/ Lindsay C. Warren
Comptroller General
of the United States

OFFICE MEMORANDUM

UNITED STATES GOVERNMENT
DATE: July 6, 1951

TO : Chief, Division of Administration

FROM : Chief Counsel

SUBJECT: Delta Refuge Oil Royalties

Your memorandum of June 22 indicates that I have become involved in a "controversy" of which I was not aware. As a matter of fact, it still is not clear whether any actual controversy exists since to the best of my knowledge neither of our offices has set down any firm view on the question of statutory construction that apparently is involved.

From another memorandum that has reached my desk, I gather that the immediate question is what disposition should be made of the receipts from oil and gas leases granted by the Department on certain lands within the Delta National Wildlife Refuge. The receipts now in question are rents and royalties due the United States under the terms of leases issued in accordance with the provisions of the Mineral Leasing Act for Acquired Lands of August 7, 1946 (61 Stat. 913). Fortunately, both the question and the answer are relatively simple. At the same time, it probably must be recognized that someone will confuse this question with that presented to the Comptroller in 1942, which concerned the disposition of receipts by the United States of a share in royalties received by third persons on account of the production of oil and gas, the title to which was reserved to such third persons at the time of the conveyance to the United States of title to the surface of the lands whereon the oil was found. In those circumstances, it may be just as well to analyze the Comptroller's reply (21 Comp. Gen.

381) and utilize it to support the conclusions of this memorandum.

Section 401, Title IV of the Act of June 15, 1935, (49 Stat 383) provides that 25 percentum of money received from the sale or other disposition of "surplus wildlife, or of timber, hay, grass, or other spontaneous products of the soil, shell, sand, or gravel, and from other privileges on refuges" shall be paid to the counties in which such refuges are located. Prior to the General Appropriation Act of 1951 (P. L. 759, 81st Cong.), the balance of such receipts were covered into the Treasury. Since that date, however, the balance has been made available for the management of national wildlife refuges and certain other purposes. An oil or gas lease may be either or both the grant of a right to prospect for and take oil and the sale of oil produced. As such, it is either or both a grant of a privilege and a sale of a mineral. However, the exclusive right which the landowner has to explore beneath his surface and reduce any oil or gas thereunder to possession may be granted or accepted, and when so severed, is in the nature of a profit à prendre. See Tiffany on Real Property, Third Edition, Section 589. A profit à prendre involves primarily a power to acquire by severance or removal from another's land some thing or things previously constituting a part of the land. As instance of profits à prendre may be mentioned rights to take from another's land and so acquire as one's own, wood, herbage, or coal or other minerals. Tiffany, Real Property, Third Edition, Section 839. With these definitions in mind, it is rather clear that receipts in the nature of rents and royalties from oil and gas leases which have been granted by the United States are receipts from the grant of privileges with respect to the use of refuge lands of the nature specifically covered by Section 401 of the Act of June 15, 1935, and are to be credited to refuge receipts.

While oil and gas leases probably could be made under the authority of Section 401, is is unnecessary to consider

that problem in detail since the Mineral Leasing Act for Acquired Lands now specifically authorizes the granting of such leases and also directs that receipts derived from such leases "shall be distributed in the same manner as prescribed for other receipts from the lands affected by the lease, the intention of this provision being that this Act shall not affect the distribution of receipts pursuant to legislation applicable to such lands." On the question of the distribution receipts, the legislative history of the Mineral Leasing Act for Acquired Lands is particularly helpful since the Report of the House Committee on Public Lands on H. R. 3022, 80th Congress, first session, stated, "Under the proposed Act receipts would be disposed of in the same manner as other receipts on account of non-mineral uses of the same land, and protection is also afforded for safeguarding outstanding rights."

As indicated above, it is not unlikely that the present question will be confused with that presented by the Department to the Comptroller General in 1942, of whether certain payments, received under the provisions of deeds by which the United States acquired title to lands now a part of the Aransas National Wildlife Refuge, should be deposited to "refuge" receipts and distributed in accordance with Section 401, or should be credited to miscellaneous receipts. In his reply, (21 Comp. Gen. 873), the Comptroller determined that the receipts in question were not those of the nature covered by the provisions of Section 401, and, therefore, that they should be deposited in miscellaneous receipts. The decision is unnecessarily long since he very easily could have arrived at his net conclusion by relying on the fact, which was more or less incidentally mentioned in his opinion, that the particular receipts in question were not receipts from sales made by the Government, but were simply a share of proceeds arising out of sales made by third persons of property owned by such persons. The obligations of the third persons to pay the Government a share of the proceeds from the sale of oil arose out of contractual obligation having

no direct or indirect relationship to a disposition by the Government of either surplus or other property.

After citing in full Section 401 of the Act of June 15, 1935; certain portions of section 301 of the same Act; several sections of regulations governing the administration of wildlife refuges; and, portions of the legislative history of Section 401, the Comptroller enters into a somewhat interesting discussion of the meaning of the words "spontaneous," "products," and "soil" as used in the first few phrases of Section 401. He also discusses the application of the doctrine of ejusdem generis to the enumeration of timber, hay, and grass. With respect to the definitions, he concludes (1) that the word "spontaneous" should be given its usual meaning, (2) that "products" means things produced, (3) that "soil" refers to the face or surface of the ground, that "oil" is a mineral and therefore is not a "spontaneous product of the soil." He then points out that under the doctrine of *ejusdem generis*, the term "other spontaneous products of the soil" can include only products of like kind or character which, in this instance, are limited to products like timber, hay, or grass, and, therefore, could not include oil. He emphasizes the application of the doctrine as well as some of its limitations by pointing out that because of the doctrine it was necessary for Congress to add the words "shell, sand, or gravel" in order to authorize the receipts from the sale of these products to be credited to refuge receipts. The net result of the decision is, first, that oil is a mineral and not a spontaneous product of the soil, and, next, that there may be at least two classes of receipts in connection with refuge administration, one of which is to be credited to miscellaneous receipts and the other of which may be credited to refuge receipts.

In passing, it may be noted that there was no discussion of the scope of the term "surplus wildlife" or of the disposition of the receipts from the sale of surplus wildlife. There also was no discussion of the scope of the

enumeration of "shell, sand, or gravel." All three of these, of course, are normally classified as minerals. Again, there was no discussion of the phrase "and from other privileges of refuges", which follows the enumeration of at least three entirely separate classes. Under the doctrine of *ejusdem generis*, as interpreted by the Comptroller, and correctly so, privileges, like those covering the removal of shell, sand, or gravel, would include the removal of oil and other minerals. It must be concluded therefore, that there is no conflict here with the net result of the Comptroller's decision since he was not dealing with the sale by the Government of any surplus property or of any privilege.

/s/ Donald J. Chaney
DONALD J. CHANEY

[SEAL]

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
Washington, D.C. 20240

Feb. 20, 1964

Memorandum

TO: Secretary

FROM: Assistant to the Secretary and
Legislative Counsel

SUBJECT: Hearings on Revenue Sharing Bills
S. 1363, Senate Commerce Committee on
February 21, 1963.

By letter of February 18, 1964, the National Association of Counties recommended three (3) changes in the revenue sharing bills. These changes and our comments thereon are as follows:

1. All timber and mineral receipts from Federally acquired refuge lands and public lands should continue to be shared—25 percent to the counties and 75 percent to Government.

   Effect: On public lands—None. S. 1363 provides for the payment of 25 percent of revenues, including timber and mineral receipts, as under present law.

   On acquired lands—Some counties would receive disproportionate amounts—25 percent for mineral and timber receipts plus three-fourths of 1 percent for all other revenues. The non-mineral, non-timber counties would receive only three-fourths of 1 percent of revenues. At very least, this should be either-or basis. Also, it would require the Department to seek additional appropriations of at least $350,000 annually. Destroys the purpose of bill, which is to provide for equally distribution of all revenues.

2. Counties want guarantee that they will receive minimum amounts even if no revenues. They suggest differences come from the sale of duck stamps.

   Effect: Duck stamp funds now used specifically for land acquisition only. Conservationists oppose any attempt to use these funds for any other purpose. Further, this destroys shared-revenue approach and makes it a direct payment-in-lieu-of taxes bill. This is a bad precedent.

3. Counties want Federal Government to pay assessments of drainage and school districts on lands acquired herafter.

The Department's report opposes payment of bonded indebtedness in land acquisition. We would also oppose on annual basis, since amounts may or may not be fixed. This amounts to taxation of Federal loans. Legislation on this general subject H.R. 5565 has been introduced. Our report, which is favorable with amendments, is at the Bureau of the Budget.

Finally, the counties suggest that the value of acquired lands within the refuge system be determined periodically by a joint appraisal committee of Interior, counties, and third party. This appraisal would be used for determining revenues to counties.

Effect: The cost of periodic appraisal of nearly 3.5 million acres of land would be overwhelming and probably not justified.

/s/ Lewis A. Sigler
for Max N. Edwards

DBFinnegan:ah 2/20/64

Copy to: Files

APPENDIX C

STATE OF ALASKA /
DEPARTMENT OF LAW /
*Office of the Attorney General* /

PINK

JAY S. HAMMOND, *Governor*
POUCH K—STATE CAPITOL
JUNEAU 99811

November 12, 1975

Elmer B. Staats
The Comptroller General of
the United States
General Accounting Office Building
441 G St.
Washington, D.C. 20548

Dear Comptroller General Staats:

I am writing to you about a decision issued by your office July 29, 1975, (File No. B-118678) in response to a request from the Solicitor of the Department of the Interior. The decision holds that the disposition of receipts from oil and gas leases on wildlife refuges "is governed by 16 U.S.C. § 715s, and not by the Mineral Leasing Act." (Page 3). The basis for this holding is the conclusion that a 1964 amendment which added the term "minerals" to Section 715s impliedly repealed the Mineral Leasing Act's applicability to wildlife refuges. The decision, which appears to be based on views put forward in the Solicitor's draft opinion, rests entirely on a reading of the statutes and does not analyze the legislative history or contemporaneous facts. Since an implied repeal or amendment necessarily rests upon legislative intent, *United States* v. *Borden*, 308 U.S. 188, 198 (1939) this omission is most unfortunate.

A review of the legislative history of the 1964 amendment to 16 U.S.C. § 715s clearly demonstrates that Con-

gress intended no such repeal and that, on the contrary, Congress intended to continue the scheme for disposition of funds which was in existence prior to the amendment.

The key to determining Congress' intention when it added the term "mineral" to section 715s is an understanding of the different treatment accorded those oil and gas revenues derived from leases on wildlife refuges reserved from the *public* lands and those derived from leases on wildlife refuges created from *acquired* lands. Prior to the 1964 amendment, section 715s originally applied to:

> ". . . surplus wildlife, or timber, hay, grass, or other spontaneous products of the soil, shell, sand or gravel, or other privileges on refuges . . ." Act of June 15, 1935, § 410, 49 Stat. 383.

While the language "other privileges" is perhaps broad enough to encompass revenues from all mineral leases, including oil and gas leases, all the evidence indicates that the Department of the Interior in its administration of the Act never construed this language as applying to revenues from oil and gas leases. For example, regulations issued under the authority of 16 U.S.C. § 715s are silent on the meaning of the term. 50 C.F.R. part 34. Nor were revenues from oil and gas leases on wildlife ranges actually distributed in accordance with the provisions of section 715s. A case in point is the Kenai National Moose Range which produced oil valued at approximately $33 million in 1963. In testimony before the Senate Commerce Committee, the Fish and Wildlife Service submitted a report showing payments to states under section 715s prior to the 1964 amendments. This report shows payments to Alaska from revenues attributable to the Kenai Moose Range as $1,768 in 1963. Obviously, this did not include the revenues from oil and gas leases then producing in the Range. *Hearing on* S.179, S.1363, S.1720, and S.2498 *Before the Committee on Commerce, United States Senate*, 88th Cong. 2d Sess., Ser. 48, at p.

34 (1964) (hereinafter, "Senate Hearings") The State of Alaska's records indicate that federal royalty payments from the Kenai Moose Range were distributed to the State both prior to and after the 1964 amendment, in accordance with the Mineral Leasing Act, not section 715s. Finally, it should be noted that if the term "other privileges" were construed to encompass revenues from oil and gas leases, then a conflict between the Mineral Leasing Act and section 715s would have existed from the time of initial enactment of section 715s in 1935.

Since section 715s did not apply to revenues from oil and gas leases on wildlife refuges, one might reasonably ask why the Secretary of the Interior testified that:

> "Under existing law, enacted in 1935, the counties in which our refuges are located receive 25 percent of the net revenues from operations on national wildlife refuges, such as oil production, grazing, timber harvest and the like." (emphasis added).

*Senate Hearings, supra,* at p. 19, *Hearings on* HR. 1127, HR. 2393, HR. 9030, HR. 11008 *Before the Subcommittee on Fisheries and Wildlife Conservation of the Committee on Merchant Marine and Fisheries,* United States House of Representatives, 88th Cong., 2d Sess. Ser. 88-21, at p. 34 (1964) (hereinafter *"House Hearings"*) The answer is that section 715s, although not by its own terms applicable to oil and gas revenues was made applicable to revenues from oil and gas leases on *wildlife refuges created from acquired lands,* by the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 351 *et seq.* Section 355 of that act provides for disposition of revenues from oil and gas leases on acquired lands as follows:

> § 355. Disposition of receipts
>
> All receipts derived from leases issued under the authority of this chapter shall be paid into the same funds or accounts in the Treasury and shall be dis-

> tributed in the same manner as prescribed for other receipts from the lands affected by the lease, the intention of this provision being that this chapter shall not affect the distribution of receipts pursuant to legislation applicable to such lands: *Provided, however,* That receipts from leases or permits for minerals in lands set apart for Indian use, including lands the jurisdiction of which has been transferred to the Department of the Interior by the Executive order for Indian use, shall be deposited in a special fund in the Treasury until final disposition thereof by the Congress."

Thus, when the Secretary of the Interior testified about disposition of revenues from oil production in accordance with the requirements of section 715s, he was referring only to refuges created from acquired lands. Throughout the House and Senate hearings the only discussion of oil and gas revenues from wildlife refuges is references to the Delta National Wildlife Refuge located in Plaquemines Parish, Louisiana. *Senate Hearings, supra* at 30-33, 45, 81, 98. *House Hearings, supra* at 42, 48, 61-68, 84-85. *See also,* H.R. Rep. No. 1753, 88th Cong. 2d Sess. (1964). This is a wildlife refuge created from acquired lands, the oil and gas revenues from which were distributed pursuant to the Mineral Leasing Act for Acquired Lands. *See United States* v. *Leiter Mineral,* 204 F.Supp. 560, 562 N.4 (S.D.La. 1962) rev'd 329 F.2d 85 (1964) vacated, 381 U.S. 413 (1964).

In the light of the above, the question presented by the 1964 amendment to section 715s is whether by adding the term "mineral" Congress intended to confirm the existing practice of distributing oil and gas revenues from wildlife refuges created from acquired lands pursuant to section 715s, and oil and gas revenues from wildlife refuges created from reserved public domain pursuant to the Mineral Leasing Act of 1920; or did Congress intend to change the prior practice, so that oil and gas revenues from all wildlife refuges, regardless of their

manner of creation, would be distributed pursuant to section 715s.

Since distribution of revenues under the Mineral Leasing Act and under section 715s is substantially different, in one case payments being made to States and the Reclamation Fund and in the other to counties and the Wildlife Refuge Fund, it is highly unlikely that Congress would have intended to repeal the Mineral Leasing Act and replace it with section 715s without any discussion or comment by any of the parties affected. Yet, there is not one single acknowledgement in the legislative history of a change. Indeed, the legislative history makes clear beyond peradventure that none of the parties expected any change in the distribution of revenues from wildlife refuges reserved from the public domain.

Certainly the Department of the Interior, which sponsored one of the bills which added the term "minerals," did not envision any change in the treatment of revenues from reserved wildlife refuges. The Secretary of the Interior testified that "all of the revenues from refuge operations on *acquired lands* would be placed in a pool for equitable sharing by all the counties in which we have units of the national wildlife refuge system . . . As to *reserved public lands*, there would be no change in the present payment of 25 percent of net receipts from such lands." *Senate Hearings, supra* at p. 19 (emphasis added). Mr. Davis Janzen, Director of the Bureau of Sport Fisheries and Wildlife testified that

> "S. 1363 [sponsored by Interior] is not an "in lieu of taxes" proposal and is not intended to equate payments to counties with the tax losses they have sustained. It is merely a revision of existing authority for the sharing of revenues to effect a more equitable distribution of available revenue to the various counties in which the acquisition of refuge lands in fee has occurred or is contemplated." *Senate Hearings, supra* at 60 (emphasis added).

A table prepared by the Fish and Wildlife Service and submitted to the House and Senate Committees shows that the bill sponsored by Interior would have no effect on those refuges which did not have acquired lands. *Senate Hearings, supra* at p. 33-41. *House Hearings, supra* at p. 89-96. Indeed, this table is so specific on this point that no reasonable doubt may exist that no change was intended in the distribution of oil and gas revenues from refuges reserved from the public lands. A letter by John Carver, Assistant Secretary of the Interior to the Chairman of the House Merchant Marine and Fisheries Committee contained a section-by-section analysis of the Department's bill. This analysis made no mention of any change contemplated by Interior in the treatment of oil and gas revenues on wildlife refuge created from reserved public lands. *House Hearings, supra,* at 6-10. At many points in the House and Senate hearings, Department of the Interior officials commented on the affect the proposed bills would have on revenues received by and expended from the Wildlife Refuge Fund. In doing so, these officials never once stated that the Fund would receive as a new source of revenue revenues from oil and gas production on wildlife refuges reserved from the public domain. Yet, if the bills were intended to apply to such refuges this new source of potentially enormous revenue for the Fund would have been obvious. (Interestingly, the then Comptroller General construed the bill as *reducing* the revenues available to the Bureau of Sport Fisheries and Wildlife. He gave no indication that he understood the bill to mean revenues from oil and gas production on reserved wildlife refuges would be paid to the Fund. *Senate Hearings, supra,* at 10-13.)

Nor does it appear that any of the States understood the bill as affecting the revenues they received from oil and gas production on reserved wildlife refuges pursuant to the Mineral Leasing Act. Governor Egan of Alaska stated that he was "in accord with the general purpose and principles" of the bills. *Senate Hearings, supra* at

77. Since Alaska stood to lose several million dollars in revenue if the bills repealed the distribution formula of the Mineral Leasing Act, Governor Egan obviously did not regard the bill as making such a repeal. Senator Bartlett from Alaska, likewise understood the bill as raising no major concern for Alaska. *Senate Hearings, supra* at 64-65.

The original bill sponsored by the Department of the Interior provided that counties would receive payments based on the "adjusted value" of the acquired lands. *See Senate Hearings, supra,* at 3 (the original version of S.1363). Under this bill revenues paid to Plaquemines Parish, Louisiana would have been reduced by approximately $280,000. Fifteen other counties would have suffered much smaller reductions in revenues received because the 25% they were receiving in accordance with the provisions of the pre-1964, section 715s exceeded the three-fourths of one percent of adjusted value they would have received under the Department of the Interior bill. In order to protect the revenues of these counties Senator Metcalf proposed an amendment to the Department's bill which would allow a county to choose to receive payments either under the "adjusted value" formula or under the 25% of revenues produced from the refuge formula. *Senate Hearings, supra,* at 30-33. This amendment was adopted and became part of the final amendments to section 715s. It seems unlikely that Congress would act expressly and decisively to protect revenue payments to certain counties whose revenues derived principally from oil and gas leases, while at the same time depriving States of substantially larger shares of oil and gas revenues without the slightest comment on the matter.

I believe the facts discussed above clearly indicate that neither Congress, the Department of the Interior, nor anyone else intended the 1964 amendment to section 715s to repeal the Mineral Leasing Act or in any other way change the distribution scheme for funds from wildlife refuges reserved from the public lands. The legislative

history when taken as a whole is unmistakably clear that the amendment was intended to apply only to wildlife refuges created from acquired lands. Indeed, it was only because the Department of the Interior *had been unable to acquire lands for refuges and waterfowl production* areas that the need for this amendment arose.

Implied repeals are disfavored and if two statutes reasonably can be interpreted consistently without frustration of their intent or purpose, then no repeal should be implied. *Morton* v. *Mancari*, 417 U.S. 535, 549-551 (1974); Sutherland, Statutory Construction, §§ 23.09, 23.10 (Sands, 4th ed., 1972). As we have shown, and as the legislative history would seem to require, the Refuge Act amendment of 1964, the Mineral Leasing Act, and the Mineral Leasing Act for Acquired Lands can be interpreted consistently and without frustration of purpose because of the different treatment afforded to refuges reserved from the public lands and those created from acquired lands. That being so, no repeal should be implied.

At any event, even if the Mineral Leasing Act were impliedly repealed by the 1964 amendment to section 715s, that repeal would itself have been impliedly repealed and the Mineral Leasing Act reinstated with respect to public lands in Alaska, by the Alaska Native Claims Settlement Act of 1971. 85 Stat. 688. Section 9(d) in the Act provides:

> (d) All bonuses, rentals, and royalties received by the United States after the date of enactment of this Act from the disposition by it of such minerals in public lands in Alaska shall be distributed as provided in the Alaska Statehood Act, except that prior to calculating the shares of the State and the United States as set forth in such Act, (1) a royalty of 2 per centum upon the gross value of such minerals produced (as such gross value is determined for royalty purposes under the sale or lease), and (2) 2 per centum of all rentals and bonuses shall

be deducted and paid into the Alaska Native Fund. The respective shares of the State and the United States shall be calculated on the remaining balance.

Section 3(e) of the Act defines public lands as "all Federal lands and interests therein located in Alaska" with two exceptions not relevant here. Hence Congress has expressly reaffirmed the distribution scheme for federal royalties, rentals and bonuses in effect at the time Alaska became a State in 1959. This was, of course, the scheme required by the Mineral Leasing Act. *See* Alaska Statehood Act, § 28(b), 72 Stat. 339 (1971). It is clear that Congress in 1971 understood that revenues from all federal oil and gas leases in Alaska were to be distributed under the Mineral Leasing Act. (Other than from Naval Petroleum Reserve No. 4. See H. Conf. Rep. 92d Cong. 92-746 at 35 (1971)). This may be regarded as further indication that Congress did not intend and did not interpret its 1964 amendment to section 715s as repealing the Mineral Leasing Act with respect to oil and gas revenues from refuges reserved from the public lands. This would seem the proper interpretation. However, if one is wedded to the disfavored doctrine of repeal by implication, then certainly the 1971 Alaska Native Claims Settlement Act is as much an implied repeal of the 1964 amendment to section 715s as that amendment was of the Mineral Leasing Act.

For the reasons discussed above, I respectfully request that your decision of July 29, 1975 be modified to make clear that oil and gas revenues from leases on wildlife refuges reserved from public lands are to be distributed

according to the Mineral Leasing Act of 1920 and not section 715s, as amended.

Sincerely yours,

/s/ Avrum M. Gross
AVRUM M. GROSS
Attorney General

cc: Senator Ted Stevens
Senator Mike Gravel
Congressman Donald E. Young

AMG:db:FB

bcc: Guy Martin
Sterling Gallagher

APPENDIX D

[SEAL]

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
Washington, D.C. 20240

March 16, 1976

Mrs. Rollee Lowenstein
Assistant General Counsel
General Accounting Office
Washington, D.C. 20548

Dear Mrs. Lowenstein:

Your inquiry dated December 8, 1975, to the Secretary of the Interior regarding Comptroller General's Decision Number B-118678 has been referred to us for reply. In that inquiry you requested our views on issues raised by the Attorney General of Alaska in his November 13, 1975 letter to the Comptroller General. In that letter, the Attorney General suggests that Comptroller General's Decision Number B-118678 be modified to provide that oil and gas revenues from leases on wildlife refuges *reserved* from public lands should be distributed according to Section 35 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. § 191), and not 16 U.S.C. § 715s, as amended. The Interior Department disagrees with each and every argument made by the Attorney General of Alaska, and requests that B-118678 be affirmed.

The State of Alaska argues that the legislative history of 16 U.S.C. § 715s shows that Congress did not intend this statute to encompass receipts from mineral leases on reserved wildlife refuges. The statute does, however, clearly and explicitly on its face manifest such an intent. And the "plain meaning rule" for stautory interpretation, enunciated by the U.S. Supreme Court in

*Caminette* v. *United States*, 242 U.S. 470 (1917) dictates that:

> the meaning of the statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, . . . the sole function of the court is to enforce it according to its terms . . . . When the language is plain and admits of no more than one meaning the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion.

The statute in question, 16 U.S.C. § 715s, was extensively amended in 1964. This amendment created, for the first time, a separate fund in the Treasury for the benefit of the National Wildlife Refuge System. Section 715s(a) unambiguously provides that into this fund shall be deposited "*all* revenues received by the Secretary of the Interior from the sale or other disposition of . . . minerals . . . during each fiscal year in connection with the operation and management of those areas of the National Wildlife Refuge System that are solely or primarily administered by him, through the United States Fish and Wildlife Service . . . ." (Emphasis added). Nor is there any doubt about what lands Congress covered in this enactment, for § 715s(a) explicitly provides:

> The National Wildlife Refuge System . . . includes those lands and waters administered by the Secretary as wildlife refuges, lands *acquired or reserved* for the protection and conservation of [endangered species], wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas established under any law, proclamation, Executive, or public land order. (Emphasis added).

"Reserved" land in this context refers to land segregated from the public domain for use as wildlife refuges.[1]

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[1] "Reserved" lands are treated in § 715s as lands separate and distinct from "acquired" lands. The natural implication from this

The language of the statute clearly shows that Congress intended both acquired and reserved public wildlife refuge lands to be covered. This is further confirmed by § 715s(c), in which separate provisions for disposing of money from the fund are made for acquired lands and for reserved lands. Thus, the plain language of the statute demonstrates beyond any doubt that Congress was acutely aware that both acquired and reserved public lands were involved in the wildlife refuge system, and intended that *all* revenue collected from mineral leases on these lands should go into the special fund, regardless of whether the source of the funds was acquired land or reserved land. Since the plain meaning of the statute is not in doubt, discussions of legislative history are irrelevant.

Even if a review of the legislative history were appropriate here, such a review does not support the conclusions of the Alaska Attorney General that Congress did not intend to change the allocation of revenues from reserved refuge lands. The fact that this aspect of the legislation was not discussed at the hearings does not indicate that Congress did not consider or intend the change of revenue allocation, and the statute on its face exhibits a clear legislative intent to do so.

The hearings clearly reflect, as does the plain language of the statute that both acquired and reserved public lands were under consideration. The primary thrust of the new legislation was to provide for more equitable distribution of revenues from acquired lands because the United States Fish and Wildlife Service was encountering strong opposition from the counties in its land ac-

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**is that the statute refers to reserved public domain lands, because all wildlife refuges are on either acquired land or public domain land. Acquired lands are acquired for specific purposes and are not customarily reserved for any other purpose. Public domain lands, on the other hand, are subject to being set apart and reserved for a specific purpose. Public lands set apart for wildlife refuges are often described as "reserved".**

quisition program. This was due to the fact that those acquired lands without oil and gas revenues were producing very little revenue for distribution to the counties.[2] Under the amendment to § 715s, this would be remedied since, as to acquired lands, the counties would receive either 25 per cent of the net revenues received by the Secretary from the disposition of minerals and other products or ¾ of 1 per cent of the adjusted cost of the acquired area, whichever is greater.

The novel scheme for rectifying the inequities to the counties only applied to acquired lands. This is why in illustrating the operation of the new scheme only acquired refuge lands were discussed. It is why the table prepared by the Fish and Wildlife Service (referred to at page 5 of the Alaska Attorney General's letter) showed only acquired wildlife refuges. But the logical fact that only acquired land refuges were used to illustrate the new scheme contained in subsection (c) (2) of 715s as amended does not mean that only acquired lands are covered by the changes incorporated in subsection (a) of 715s. Subsection (a) explicitly encompasses both acquired and reserved public lands. Furthermore, it is clear that oil and gas revenues were within the contemplation of Congress in considering the bill, since oil and gas revenues were repeatedly mentioned during the hearings. (See, e.g., *Hearings Before the Committee on Commerce, U.S. Senate*, 88th Cong., 2d Sess., Ser. 48 at pp. 56, 58.)

So much attention was focused on the new provisions of subsection (c) (2) of the hearings that no discus-

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[2] Revenues for oil and gas acquired lands had been distributed in accordance with § 715s since 1947 when the Mineral Leasing Act for Acquired Lands was enacted. Section 6 of that Act, 30 U.S.C. § 355, provides for the distribution of oil and gas receipts "in the same manner as prescribed for other receipts from the lands. . . , the intention of this provision being that this chapter shall not affect distribution of receipts pursuant to legislation applicable to such lands. . . ."

sion was held about the changes which were incorporated in subsection (a). Apparently, the states also focused their attention on subsection (c) (2) and failed to realize the import of the changes in subsection (a). If the bill as passed truly did not embody the intent of Congress, then it is for Congress to take corrective action by amending 715s; as it now stands, it simply cannot be interpreted as the Attorney General of Alaska suggests.

The Attorney General also argues that as of 1971, the 1964 amendment to 715s was impliedly repealed with respect to public lands in Alaska by the Alaska Native Claims Settlement Act, 85 Stat. 688, section 9(d). That section provides, in pertinent part, that all revenues received by the United States from disposition of minerals from public lands in Alaska "shall be distributed as provided in the Alaska Statehood Act . . . ."

But the Alaska Statehood Act, § 28(b), does not provide that all federal mineral receipts in Alaska are to be distributed under the Mineral Leasing Act. It merely amends the Mineral Leasing Act to refer to Alaska as a State rather than a Territory. Thus, the Alaska Statehood Act merely refers to Alaska's share of the revenues which *are* distributed under the Mineral Leasing Act; it does *not* make any provisions as to *which* revenues are so distributed. Therefore, there is no apparent conflict between the Alaska Native Claims Settlement Act and 16 U.S.C. § 715s due to the citation in ANCSA of the Alaska Statehood Act. Since there is no apparent conflict in this case, the State of Alaska would have the Comptroller General create one by his interpretation of the two statutes. But the rule is well established that an interpretation which creates a conflict between two statutes is disfavored over one which reconciles them (73 Am Jur 2d, Statutes, § 254, p. 425). Such a disfavored interpretation, even if considered at all, would require a solid basis in the legislative history of ANCSA to be convincing.

The legislative history of ANCSA furnishes no support for such an interpretation, but shows overwhelmingly that there was no intention to alter the basic scheme for distribution of mineral revenues. Section 9(d) was intended only to provide a source of revenue for the Alaska Native Fund by establishing a 2% overriding royalty on mineral revenues from public lands, and its reference to the Alaska Statehood Act was intended merely as a reference to the status quo. As stated in House Report 92-253, 1971 U.S. Code Cong. and Adm. News at 2193, "[t]he purpose of H.R. 10367 is to provide an equitable solution to the claims made by the Natives of Alaska through a combination grant of land and money. Under the bill the Natives would receive . . . $500,000,000 from mineral reserves *that would otherwise go to the State of Alaska.*" (Emphasis supplied). The conference committee stated that most of the $500,000,000 to be paid to the Natives "would otherwise be paid to the State *under existing law.*" (Sen. Rept. No. 92-581, 92 Cong., 1st Sess. (1971) at 35, emphasis supplied). Thus, the only change intended was to divert a percentage of mineral lease revenues from the existing scheme for the benefit of the natives.

At the time ANCSA was passed, the amended version of 16 U.S.C. § 715s had been on the books for several years, and was thus part of the existing scheme for disposing of mineral revenues. It carved out a narrow exception to the general provisions of the Mineral Leasing Act, and this exception was sustained by the later references of Congress to the existing scheme, since:

> Where a statute is intended to cover all the ground of prior ones on the same subject, and revises the entire law on such subject, all prior conflicting laws will be repealed even though they are special acts. However, where the scheme of revision clearly implies a compilation and continuation of existing general laws, together with such changes as are necessary to harmonize them, the revised laws will not

> operate as a repeal of a special statute which has already engrafted an exception under the general law. 73 Am Jur 2d, Statutes § 413, p. 519.

There is considerable evidence that the Congress was not aware of the full extent of the exception carved out by 715s at the time it considered ANCSA, but this only shows the absurdity of contending that Congress intended to undo the effects of 715s which have only recently been realized. While Congress may not have had an accurate picture of all of the details of the general mineral revenue scheme at the time, it is still clear that Congress intended no changes in that scheme.

Various other provisions of ANCSA corroborate this interpretation. Section 2(b) of the Act, for example, provides that:

> the settlement should be accomplished . . . without adding to the categories of property and institutions enjoying special tax privileges or to the legislation establishing special relationships between the United States Government and the State of Alaska.

This manifests an intent to minimize the effects of the Act on matters unrelated to the settlement of native claims, and is inconsistent with an interpretation of Section 9(d) of the Act which would override the application of 16 U.S.C. § 715s with respect to Alaska. That interpretation would indeed create a "special relationship" which does not exist with respect to the other 49 states.

Sections 12(a) and 14(f) of the Act indicate that the United States fully intended to retain its mineral rights in National Wildlife Refuges to the greatest extent possible. Section 12(a) provides that when a Village Corporation under the Act selects a surface estate in National Wildlife Refuge land, or in Naval Petroleum Reserve No. 4, the Regional Corporation for that region should select the subsurface estate in an equal acreage from *other* lands within the region if possible. Section 14(f) makes

similar provisions for surface and subsurface patents where wildlife refuge land is involved.

Further evidence that the Alaska Attorney General's interpretation of ANCSA is incorrect is contained in section 9(g) of ANCSA, which provides that the provisions of section 9 shall no longer apply after $500,000,000 has been paid into the Alaska Native Fund. If § 9(d) were interpreted to alter the general scheme for distribution of mineral revenues, then its automatic repeal when the $500,000,000 figure was reached would make no sense at all. There is no logical reason why the wildlife refuge fund should stop receiving *all* revenue from reserved refuges while a percentage of that revenue is being paid to the native fund, and then suddenly start receiving all the revenue again when the 2% override is lifted.

By far the most persuasive proof that ANCSA was not intended to override 16 U.S.C. § 715s and that there is in fact no conflict between the two is found in the controversy, which arose during early consideration of ANCSA, about whether § 28(b) of the Statehood Act provides a substantive grant of mineral revenues to the State. Earlier in our discussion, we demonstrated that § 28(b) of the Statehood Act, referred to in ANCSA § 9 (d), contains no such substantive grant. If it did contain such a grant, as the Alaska Attorney General asserts, then § 9(d) of ANCSA would be *unconstitutional.* And, ironically, this argument was first made by none other than the Alaska Attorney General during Senate hearings on S. 1830 in 1969. (The bill was a precursor of ANCSA.)

While S. 1830 was under consideration, the Alaska Federation of Natives sought a change in the bill to provide a 2% overriding royalty similar to the one ultimately incorporated in ANCSA. The Alaska Attorney General filed a brief with the Senate Committee on Interior and Insular Affairs in which he asserted that such a grant would conflict with § 28(b) of the Statehood Act, and argued that:

> The United States may not constitutionally enact effective legislation in direct conflict with compact provisions of the Statehood Act unless there is an amendment to the Constitution of the State of Alaska because the Statehood Act constitutes a compact in the nature of a contract between two sovereign governments. (*Hearings on S. 1830, Before the Committee on Interior and Insular Affairs, U.S. Senate*, 91st Cong., 1st Sess., (1969) at 264.

If the 2% were deducted from the royalties before apportionment of the State's share, he argued, the State would be in effect deprived of its 90% share of the 2% portion, contrary to the Statehood Act.

The Solicitor of the Department of the Interior answered these arguments in a brief filed with the Committee. He explained that there was no conflict with the Statehood Act because

> it is not Section 28(b) of the Statehood Act which grants a percentage of mineral revenues to the State of Alaska. The section is merely a perfecting clause which substitutes the word "State" for the word "Territory" in Section 35 of the Mineral Leasing Act, 41 Stat. 450 (1920), as amended. . . . To hold that Section 28(b) contains a substantive grant of mineral revenue royalties which in turn is contained within a Federal-State compact would result in the requirement of an approval by the State of Alaska of any future Mineral Leasing Act amendment proposed by Congress. This cannot have been the intended result. Section 28(b) of the Statehood Act was not intended to be a substantive provision, does not operate as such, and furthermore does not come within the compact at all. Thus, Congress is free to deal with revenues under the Mineral Leasing Act in any manner which it deems advisable. (*Senate Hearings, supra*, at 573)

This reasoning was apparently accepted by the Congress, for the 2% overriding royalty was ultimately made a part of ANCSA, and no problem with its constitutionality was recognized. It seems the correct reasoning to us, but if, as the Alaska Attorney General now asserts, § 28(b) of the Statehood Act was a substantive grant of mineral revenue royalties, then by his own arguments made before the Senate Committee in 1969, § 9(d) of ANCSA would be unconstitutional. Thus the very interpretation which would create a conflict between § 9(d) of ANCSA and 16 U.S.C. § 715s also resolves that conflict by rendering § 9(d) void.

We feel that the foregoing discussion amply illustrates the invalidity of the position now advocated by the Attorney General's of Alaska. There should be no modification of Comptroller General's decision B-118678 based on the arguments he has submitted. We do wish to point out, however, that there is a new development which will have some effect on the disbursement of revenues from wildlife refuges in Alaska.

Public Law 94-204, enacted on January 2, 1976, Sec. 2(a) provides as follows:

> From and after the date of enactment of this Act, or January 1, 1976, whichever occurs first, any and all proceeds derived from contracts, leases, permits, rights-of-way, or easements pertaining to lands or resources of lands withdrawn for Native selection pursuant to the Settlement Act shall be deposited in an escrow account which shall be held by the Secretary until lands selected pursuant to that Act have been conveyed to the selecting corporation or individual entitled to receive benefits under such Act. As such withdrawn or formerly reserved lands are conveyed, the Secretary shall pay from such account the proceeds, together with interest which derive from contracts, leases, permits, rights-of-way, or easements, pertaining to such lands or resources of such lands, to the appropriate corporation or indi-

> vidual entitled to receive benefits under the Settlement Act. The proceeds derived from contracts, leases, permits, rights-of-way, or easements, pertaining to lands withdrawn or reserved, but not selected or elected pursuant to such Act, shall, upon the expiration of the selection or election rights of the corporations and individuals for whose benefit such lands were withdrawn or reserved, be paid as would have been required by law were it not for the provisions of this Act.

This provision is clearly a substantive one and would create a specific exception to 16 U.S.C. § 715s with respect to any wildlife refuge lands in Alaska which have been withdrawn for native selection pursuant to ANCSA. Furthermore, Sec. 12(b)(1) and (2) of P.L. 94-204 mandate certain conveyances of title to both land and oil, gas, and coal within the Kenai National Moose Range, which is a reserved wildlife refuge. Some of the revenues from Kenai which would otherwise be disbursed under 16 U.S.C. § 715s should thus be going instead to either the escrow fund or directly to the grantees of certain land and mineral rights within the Kenai Moose Range. While these developments do alter the situation with respect to some lands in Alaska, they do not necessitate a modification of the Comptroller General's opinion, which is general in nature and was issued prior to the enactment of this new statute.

Sincerely yours,

/s/ H. Gregory Austin
H. GREGORY AUSTIN
Solicitor

cc: Associate Solicitor, Conservation and Wildlife
Assistant Solicitor, Fish and Wildlife
Director, Bureau of Land Management
Director, Fish and Wildlife
Secretary's Reading Files
DER-Reading File
DER-Reading File (Minerals)
Docket
Sol. Reading File
SSutherland
Attorney General of Alaska

SOL:SSutherland:ljj 3-2-76 x4803

APPENDIX E

STATE OF ALASKA
DEPARTMENT OF LAW

*Jay S. Hammond, Governor*

April 1, 1976

Mrs. Rollee Lowenstein
Assistant General Counsel
General Accounting Office
Washington, D.C. 20548

Dear Mrs. Lowenstein:

In November, I wrote to Comptroller General Staats to request that he reconsider his decision in matter of: Disposition of Receipts From Leases of Oil and Gas Rights Within the National Wildlife Refuge System, File No. B-118678. You advised me in December that the Secretary of the Interior had been asked to comment upon my request and that after receipt of his response you would consider the matter further.

I recently received the comments of the Solicitor of the Department of the Interior and hereby submit a brief response to those comments. I also ask that you give this matter expeditious consideration, as the payment to the State of Alaska of more than $3 million dollars in revenues from the Swanson River Oil Field is being held by the Department of the Interior pending the Comptroller General's reconsideration.

The Solicitor relies upon the "plain meaning rule" for his conclusions that the "meaning of the statute is not in doubt" and "discussions of [the] legislative history are irrelevant." Although one might ask why, if the meaning is so plainly beyond peradventure, it took the solicitor more than 10 years to discover the meaning; the best response to those who seek to confine their understanding

of the law solely to the words of a statute has been eloquently put by Justice Frankfurter:

> "The notion that because the words of a statute are plain, its meaning is also plain, is merely a pernicious over-simplification . . . . to which lip service has an occasion been given here, but which since the days of Marshall this Court has rejected, especially in practice. [citations omitted] A statute like other living organisms, derives significance and sustenance from its environment, from which it cannot be severed without being mutilated. *United States* v. *Monia*, 317 U.S. 424, 431-32 (1943) (Frankfurter, J., dissenting)

*See also Kokoza* v. *Belford*, 417 U.S 642, 650 (1964); *United States* v. *Campos-Serrano*, 404 U.S. 293, 298 (1971); *Boys Markets* v. *Retail Clerks Union*, 398 U.S. 235, 250, (1970); *NLRB* v. *Allis Chalmers Mfg. Co.*, 388 U.S. 175, 184 (1967).

Even if it is conceded the "plain meaning rule" on occasion may be a useful tool of statutory construction, it is obvious that such rule of construction cannot be blindly followed in contravention of another rule of statutory construction—namely, the rule that implied repeals are disfavored and if two statutes reasonably can be interpreted consistently, then no repeal should be implied. *Morton* v. *Mancari*, 417 U.S. 535, 549-551 (1974). Yet this is precisely what the solicitor asks be done, since it is possible to give a literal interpretation to § 715s only by assuming that Congress impliedly repealed section 35 of the Mineral Leasing Act, 30 U.S.C. § 191. The solicitor in his most recent comments managed to avoid this obvious conflict by analyzing § 715s without mention of the Mineral Leasing Act and in total disregard of the fact that his initial memorandum, the Comptroller General's decision, and my letter to you of November 12, 1975 all dealt with the issue of whether or not § 715s *must be interpreted* as impliedly repealing section 35 of the Mineral Leasing Act.

The solicitor argues that review of the legislative history supports the conclusion that Congress intended to change the allocation of revenues from *reserved* refuge lands. The solicitor offers no citations to the legislative history to justify this assertion,[1] but explains that lack of written record by noting that "[s]o much attention was focused on the new provisions of subsection (c) (2) at the hearings that no discussion was held about the changes which were incorporated in subsection (a)." The solicitor's explanation overlooks the fact that the changes in subsection (c) (2) cannot be divorced from the changes in subsection (a). The size of the fund created in subsection (c) (2) necessarily depended on the products of the wildlife refuge ennumerated in subsection (a). Thus if the revenues from oil and gas found on wildlife refuges created from reserved lands were to be included in the fund, the fund would be larger than if such revenues were not included. That being so, it is not unreasonable to expect Congressmen and Interior officials to take account of revenues from that source when comparing the income to the fund against the expenditures from the fund. Yet, in none of the discussions of the size of the fund does anyone acknowledge or make reference to the change in subsection (a) as providing a

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[1] The solicitor's only citations to the legislative history are to the testimony of Mr. Janzen, a Department of the Interior official. The solicitor asserts Mr. Janzen repeatedly mentioned oil and gas revenues during the hearing. I would point out that Mr. Janzen also referred frequently to "acquired" or "purchased" refuge lands. (My count of Mr. Janzen's prepared testimony shows 1 reference to "oil and gas" and 16 references to "acquired" or "purchased" lands). As set forth in my earlier letter to you, oil and gas revenues from wildlife refuges created from *acquired* lands must be distributed in accordance with § 715s. *See* Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 351 *et seq.* Thus, Mr. Janzen's reference to oil and gas revenues in the context of discussions about acquired lands is entirely consistent with the interpretation of the 1964 amendments which I urge and certainly affords no grounds for the conclusion that Congress intended to repeal the Mineral Leasing Act.

new source of revenues to the fund. Indeed, the table submitted to both the House and the Senate by the Department of the Interior excluded oil and gas revenues from reserved wildlife refuge.[2] *See Senate Hearings*, at 33-41; *House Hearings*, at 89-96.

The solicitor's comments to you, offer no substantial reason why the 1964 amendments to 16 U.S.C. § 715s should be read to impliedly repeal the Mineral Leasing Act of 1920. Nor do the solicitor's comments rebut any of the evidence which demonstrates that *Congress did not intend to repeal* the Mineral Leasing Act. I, therefore, continue by request that you modify your decision to make clear that section 715s applies only to oil and gas reserves from wildlife refuges created from acquired public lands.

I look forward to an early answer.

Sincerely yours,

/s/ Avrum M. Gross
AVRUM M. GROSS
Attorney General

AMG-db:FHB

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[2] The solicitor states that the table showed only acquired wildlife refuges. However, this is clearly incorrect, since a perusal of the column labeled "acquired acres" shows several wildlife refuges with no acquired acreage, including all 3 refuges in Alaska. If either S. 1363 or S. 2498 had been intended to bring oil and gas revenues under § 715s then the entries in those columns for "Kenai" would be in the millions of dollars rather than $1,768.00.

SUPREME COURT OF THE UNITED STATES

No. 79-1890

CECIL D. ANDRUS, Secretary of Interior, ET AL.,
PETITIONERS

*v.*

ALASKA, ET AL.

ORDER ALLOWING CERTIORARI

Filed October 6, 1980

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

The case is consolidated with No. 79-1904 and a total of one hour is alotted for oral argument.

# SUPREME COURT OF THE UNITED STATES

No. 79-1904

KENAI PENINSULA BOROUGH, PETITIONER

*v.*

ALASKA, ET AL.

## ORDER ALLOWING CERTIORARI

Filed October 6, 1980

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